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CAUSE NO. W01-00327-S(A)

EX PARTE ) IN THE 283rd JUDICIAL  
 )  
 ) DISTRICT COURT OF  
 )  
RANDY ETHAN HALPRIN ) DALLAS COUNTY, TEXAS

REPORTER'S RECORD

VOLUME 2 OF 4 VOLUMES

On August 20, 2010, came on to be heard before the  
HONORABLE RICK MAGNIS, Judge of the 283rd Judicial  
District Court of Dallas County, Texas, the above  
entitled and numbered cause.

Proceedings reported by computerized stenotype  
machine; Reporter's Record produced by computer-assisted  
transcription.

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FOR THE APPLICANT

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4 **WITNESSES CALLED IN WRIT HEARING**5 

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1 P R O C E E D I N G S

2 (The following proceedings were had  
09:17AM 3 on August 20, 2010:)

09:17AM 4 THE COURT: This is Cause Number  
09:17AM 5 W01-00327-SA, Ex Parte Randy Ethan Halprin. This is a  
09:18AM 6 hearing -- evidentiary hearing regarding the writ filed  
09:18AM 7 on Mr. Halprin's behalf.

09:18AM 8 Are both sides ready to proceed?

09:18AM 9 MR. UDASHEN: We're ready.

09:18AM 10 MS. SMITH: State is ready.

09:18AM 11 THE COURT: Are there any matters that we  
09:18AM 12 need to take up before we start calling witnesses?

09:18AM 13 MR. UDASHEN: I filed a few things this  
09:18AM 14 morning but they don't need to be taken up before we  
09:18AM 15 call witnesses.

09:18AM 16 THE COURT: Does the State have anything to  
09:19AM 17 take up at this time?

09:19AM 18 MS. SMITH: We want to state for the record  
09:19AM 19 there have been multiple pleadings in these writ  
09:19AM 20 proceedings. We have an original writ file, amended  
09:19AM 21 writ file. We have had a supplemental brief filed. We  
09:19AM 22 have got additional arguments. To the extent that any  
09:19AM 23 of the pleadings after the original writ raise any new  
09:19AM 24 claim, the State is not waiving any procedural bar  
09:19AM 25 arguments.

09:19AM 1 It's the State's position that any new  
09:19AM 2 claims should be designated and forwarded to the CCA. I  
09:19AM 3 understand the Judge is of the mind we should litigate  
09:19AM 4 things now and get this on the road. For future  
09:19AM 5 reference, the State is not waiving its procedural  
09:19AM 6 arguments.

09:19AM 7 THE COURT: Okay. Does the defense -- the  
09:19AM 8 Applicant have any witnesses it wishes to call at this  
09:20AM 9 time?

09:20AM 10 MR. ANTON: Call Mr. Ashford, Your Honor.

09:20AM 11 THE COURT: Mr. Ashford present?

09:20AM 12 Mr. Ashford, you've been called as a  
09:20AM 13 witness.

09:20AM 14 Either side wish to have Mr. Ashford sworn?

09:20AM 15 MR. ANTON: No, Your Honor.

09:20AM 16 THE COURT: You're an officer of the court  
09:20AM 17 and should conduct yourself appropriately.

09:20AM 18 THE WITNESS: Yes, sir.

09:20AM 19 GEORGE ASHFORD,  
09:20AM 20 was called as a witness by the Applicant, testified as  
09:20AM 21 follows:

09:20AM 22 DIRECT EXAMINATION

09:20AM 23 BY MR. ANTON:

09:20AM 24 Q. State your name for the record.

09:20AM 25 A. George Ashford.

09:20AM 1 Q. What role did you play in the trial of Randy  
09:20AM 2 Halprin?

09:20AM 3 A. I was lead counsel.

09:20AM 4 Q. You've been subpoenaed to appear here today at  
09:20AM 5 the hearing?

09:20AM 6 A. That's correct.

09:20AM 7 Q. I think the subpoena was duces tecum for your  
09:21AM 8 file as well.

09:21AM 9 A. I believe the Court has my file.

09:21AM 10 THE COURT: For the record it is the  
09:21AM 11 Court's belief -- and counsel can correct me if I'm  
09:21AM 12 wrong -- that Mr. Ashford's file is in the Court's  
09:21AM 13 library and has been so for several years.

09:21AM 14 Is that correct?

09:21AM 15 MS. SMITH: I believe that's correct. I  
09:21AM 16 think couple of years ago we had him bring his files to  
09:21AM 17 the Court. I think they were given to defense counsel  
09:21AM 18 for them to review before you okayed me having access to  
09:21AM 19 them.

09:21AM 20 THE COURT: That's correct.

09:21AM 21 THE WITNESS: Wouldn't have been several  
09:21AM 22 years. I think it's been several months.

09:21AM 23 THE COURT: I stand corrected. Thank you.

09:21AM 24 Q. (By Mr. Anton) Sir, you understand the purpose  
09:21AM 25 of today's hearing is to discuss actions and conduct in

09:22AM 1 regard to representation of Mr. Halprin at trial?

09:22AM 2 A. Yes.

09:22AM 3 Q. I believe at the trial were you designated as  
09:22AM 4 lead counsel?

09:22AM 5 A. Yes.

09:22AM 6 Q. And co-counsel was?

09:22AM 7 A. Edwin, Bubba, King.

09:22AM 8 Q. Now, in regard to the trial was there any  
09:22AM 9 understanding in advance between you and Mr. King in  
09:22AM 10 terms of division of labor, division of issues,  
09:22AM 11 presentation of witnesses?

09:22AM 12 A. Yes. I can't tell you exactly what it was but  
09:22AM 13 I know Mr. King was responsible for all the pretrial  
09:22AM 14 matters. Mr. King was responsible for presentation of  
09:22AM 15 Randy as a witness. How we divided the witnesses, some  
09:23AM 16 of that stuff was not really specific. We kind of did  
09:23AM 17 it as we went along.

09:23AM 18 Q. Specifically in regards --

09:23AM 19 THE COURT: Mr. Anton, before we proceed,  
09:23AM 20 just as a procedural matter, I did adopt the State's  
09:23AM 21 proposed order designating issues for this writ hearing.  
09:23AM 22 And the order is broken into three grounds: ground  
09:23AM 23 four, five and six. Ground six regards ineffective  
09:23AM 24 assistance of counsel on appeal. We did not have  
09:23AM 25 appellate counsel testify today; is that correct?

09:23AM 1 MS. SMITH: Mr. Ashford was also appellate  
09:23AM 2 counsel.

09:24AM 3 THE COURT: You were appellate counsel as  
09:24AM 4 well?

09:24AM 5 THE WITNESS: I was appellate counsel, Your  
09:24AM 6 Honor, but I designated the appellate work to another  
09:24AM 7 attorney, Mr. Michael Muhammed.

09:24AM 8 THE COURT: You and Mr. Muhammed were the  
09:24AM 9 attorneys of record on appeal?

09:24AM 10 THE WITNESS: Correct.

09:24AM 11 THE COURT: Thank you. I wanted to clarify  
09:24AM 12 that.

09:24AM 13 Q. (By Mr. Anton) I'm sorry. Specifically in  
09:24AM 14 regard to the presentation of evidence at the punishment  
09:24AM 15 phase of trial, was that primarily your responsibility?

09:24AM 16 A. Yes.

09:24AM 17 Q. And dealing with Kelly Goodness, the mitigation  
09:24AM 18 expert?

09:24AM 19 A. Yes.

09:24AM 20 Q. Have you had an opportunity to review the writ  
09:24AM 21 that was filed?

09:24AM 22 A. Briefly at the time it was filed.

09:24AM 23 Q. And have you had an opportunity to review any  
09:24AM 24 part of the trial record, your file in preparation for  
09:24AM 25 this hearing?

09:24AM 1 A. No.

09:24AM 2 Q. I believe we have got the transcript here. I  
09:25AM 3 think your file is in the office. If there's anything  
09:25AM 4 we ask you that you think you'd want to look at  
09:25AM 5 additional materials to help you answer, just let us  
09:25AM 6 know. We would like to have as complete an explanation  
09:25AM 7 as we could. All right?

09:25AM 8 A. Okay.

09:25AM 9 Q. Starting out with the punishment phase of  
09:25AM 10 trial, you employed Dr. Kelly Goodness; is that right?

09:25AM 11 A. Correct.

09:25AM 12 Q. She was to be your mitigation expert?

09:25AM 13 A. Yes.

09:25AM 14 Q. Had you worked with her in the past?

09:25AM 15 A. No.

09:25AM 16 Q. When you got with her I assume that you  
09:25AM 17 discussed a list of materials that she would need for  
09:25AM 18 her presentation; is that right?

09:25AM 19 A. I pretty much listened to her as to what she  
09:25AM 20 had done in the past, the general way she would try to  
09:26AM 21 conduct a mitigation. My input to her would have been  
09:26AM 22 trying to locate witnesses, those types of things.

09:26AM 23 Q. And my understanding is that she didn't do any  
09:26AM 24 independent investigation herself but relied upon the  
09:26AM 25 defense team to provide her the materials necessary for

09:26AM 1 her to do her evaluation; is that right?

09:26AM 2 A. No. Actually I think she did quite a bit of  
09:26AM 3 investigation herself.

09:26AM 4 Q. Okay. Do you recall what materials were  
09:26AM 5 provided?

09:26AM 6 A. What materials were provided to who from who?

09:26AM 7 Q. Ms. Goodness.

09:26AM 8 A. What I provided to her?

09:26AM 9 Q. Yes.

09:26AM 10 A. Specifically, no. I know I had talked to a  
09:27AM 11 group of students from SMU and a professor at SMU who  
09:27AM 12 volunteered to help on the case. They had some Internet  
09:27AM 13 communications that were written about Randy that were  
09:27AM 14 reduced to print. And some of those people indicated  
09:27AM 15 that they knew Randy when he was a teenager.

09:27AM 16 And I gave all that to her so she could try  
09:27AM 17 to locate some of those people which I think that she  
09:27AM 18 did. I'm sure I gave her offense reports, those types  
09:27AM 19 of things, the names of Randy's adoptive parents, the  
09:27AM 20 name of Randy's actual brother, the name of Randy's  
09:28AM 21 birth mother. Those types of things she was  
09:28AM 22 investigating for us.

09:28AM 23 Q. Did she provide you a written report and  
09:28AM 24 evaluation of your client?

09:28AM 25 A. She did.

09:28AM 1 MR. ANTON: May I approach the witness,  
09:28AM 2 Your Honor?

09:28AM 3 THE COURT: You may.

09:28AM 4 MR. ANTON: Mark this as hearing --  
09:28AM 5 Defendant's Hearing Exhibit Number 1 if I could.

09:28AM 6 Q. (By Mr. Anton) Let me show you what's been  
09:28AM 7 marked Defendant's Hearing Exhibit Number 1. Is that a  
09:29AM 8 copy of the report?

09:29AM 9 A. I believe it is.

09:29AM 10 MS. SMITH: No objection.

09:29AM 11 THE COURT: Admitted.

09:29AM 12 (Defendant's Hearing Exhibit 1 admitted  
09:29AM 13 into evidence and is attached to this  
09:29AM 14 transcript.)

09:29AM 15 Q. (By Mr. Anton) Now, going back, there's an  
09:29AM 16 attachment A that says "case materials reviewed."  
09:29AM 17 That's on page 18 of the report, 18 and 19. Would you  
09:29AM 18 take a look at that? Does that seem to correctly  
09:29AM 19 reflect what was provided to her?

09:29AM 20 A. Yes, it does. It looks like probably pretty  
09:29AM 21 much everything that we had.

09:29AM 22 Q. I would like to ask about a couple of these  
09:29AM 23 things if you can recall. Some of the material -- the  
09:30AM 24 investigation research were a couple of binders prepared  
09:30AM 25 by the SMU death penalty clinic regarding background; is



09:30AM 1 that right?

09:30AM 2 A. Correct.

09:30AM 3 Q. Then there were materials regarding the Oneida  
09:30AM 4 Baptist Institute academic records and school records.  
09:30AM 5 Do you know if those were something that you obtained in  
09:30AM 6 discovery from the State or did you get those  
09:30AM 7 independently to provide to her?

09:30AM 8 A. Of course, the SMU material I gave her and to  
09:30AM 9 the best of my recollection I believe -- well, it says  
09:30AM 10 that she was provided it so I was about to say she got  
09:30AM 11 all of that herself but I don't remember getting any of  
09:30AM 12 that from the State. I don't remember us finding it. I  
09:30AM 13 can't answer that.

09:31AM 14 Q. Okay. A lot of these materials you can see are  
09:31AM 15 police reports and autopsy reports and so on. I assume  
09:31AM 16 many of these would be things you got from the State in  
09:31AM 17 the course of discovery.

09:31AM 18 A. Correct.

09:31AM 19 Q. Another section regards the adoption records  
09:31AM 20 and related documents. There were apparently a couple  
09:31AM 21 of binders related to the adoption records both in court  
09:31AM 22 and in the social study. Do you recall that?

09:31AM 23 A. Correct.

09:31AM 24 Q. Do you recall if that was something you got  
09:31AM 25 from the State or if that was something that you through

09:31AM 1 your investigator got independently?

09:31AM 2 A. I don't recall but I don't remember instructing  
09:31AM 3 an investigator to do any of that. My memory of that is  
09:31AM 4 that Dr. Goodness got all of that herself. So if it  
09:31AM 5 says that it was provided to her, then it had to have  
09:32AM 6 come from the State.

09:32AM 7 Q. In regard to obtaining those records -- and I'm  
09:32AM 8 primarily concerned with the adoption records and the  
09:32AM 9 school records -- do you know if when they were obtained  
09:32AM 10 they were obtained with a business records affidavit or  
09:32AM 11 some other sponsoring witness where they would have met  
09:32AM 12 the predicate for admission?

09:32AM 13 A. No.

09:32AM 14 Q. You're saying you don't recall or they weren't  
09:32AM 15 done that way?

09:32AM 16 A. I don't recall.

09:32AM 17 Q. Would there have been a reason for not wanting  
09:32AM 18 them with an accompanying affidavit or in a manner that  
09:32AM 19 could have made them admissible in court?

09:33AM 20 A. Not that I know of.

09:33AM 21 Q. Was there any strategy not to get a business  
09:33AM 22 records or sponsoring witness for them?

09:33AM 23 A. No.

09:33AM 24 Q. And I assume that you reviewed those materials  
09:33AM 25 and you talked with Dr. Goodness several times before

09:33AM 1 her presentation; is that right?

09:33AM 2 A. Yes.

09:33AM 3 Q. Now, would it be fair to say that the bulk of  
09:33AM 4 the punishment presentation or the primary evidence that  
09:33AM 5 you intended to present at punishment dealt with Dr.  
09:33AM 6 Goodness' presentation?

09:33AM 7 A. Correct.

09:33AM 8 Q. Aside from Dr. Goodness' presentation, what  
09:33AM 9 other -- was there any other independent mitigating  
09:33AM 10 evidence that you can recall presenting?

09:34AM 11 A. Presented or that we wanted to present?

09:34AM 12 Q. Let's go to wanted to present. I'm asking  
09:34AM 13 about your general strategy. What was your approach at  
09:34AM 14 punishment?

09:34AM 15 A. Our theory of the case was that Randy had been  
09:34AM 16 adopted by a family who once they adopted he and his  
09:34AM 17 brother Wesley found out they weren't the optimum kids.  
09:34AM 18 They weren't doing well in school. They had poor  
09:34AM 19 behavior.

09:34AM 20 So when they were unsatisfied with them,  
09:34AM 21 they basically abandoned them and adopted some new kids.  
09:34AM 22 And they were treated poorly. They were pretty much out  
09:34AM 23 there on their own as kids. They were emotionally  
09:34AM 24 unsupported. They were financially unsupported.

09:35AM 25 And that pretty much led to Randy getting

09:35AM 1 involved with the wrong people, going to prison and then  
09:35AM 2 eventually getting involved with the Texas Seven.

09:35AM 3 Q. Okay. Would it be fair to say that your  
09:35AM 4 punishment presentation rested mainly on Dr. Goodness'  
09:35AM 5 presentation?

09:35AM 6 A. As it ended up, yes.

09:35AM 7 Q. Well, I mean assuming that you had gotten  
09:35AM 8 everything through her that you wanted to get in  
09:35AM 9 evidence, that was your major punishment presentation;  
09:35AM 10 is that correct?

09:35AM 11 A. Correct.

09:35AM 12 Q. If she had -- aside from her testimony -- aside  
09:35AM 13 from her report, what other -- what other mitigating  
09:35AM 14 evidence in your strategy would you have presented?

09:35AM 15 A. Well, we were actively looking for  
09:35AM 16 individuals -- excuse me -- live bodies, persons who  
09:35AM 17 could come and testify to basically what I just said.  
09:36AM 18 We were able to locate his brother. We were able to  
09:36AM 19 locate his birth mother. We thought we had them on  
09:36AM 20 board for a moment until they what I would call flaked  
09:36AM 21 out on us.

09:36AM 22 We did call -- we did find one witness that  
09:36AM 23 was in the service in Shreveport. He came and basically  
09:36AM 24 testified to say, you know, our theory. And Dr.  
09:36AM 25 Goodness was looking -- I believe our investigator Bill

09:36AM 1 Hunt was looking for other people who Randy would give  
09:36AM 2 us a name of or who we identified through that SMU  
09:36AM 3 Internet data that we had.

09:36AM 4 But we just couldn't find the people. We  
09:37AM 5 couldn't locate live bodies. Passage of time, lack of  
09:37AM 6 addresses, phone numbers, Internet. Email addresses had  
09:37AM 7 changed. We just couldn't find live bodies except for  
09:37AM 8 the one.

09:37AM 9 Q. You talked about contacting Anna Lester, the  
09:37AM 10 natural mother.

09:37AM 11 A. Correct.

09:37AM 12 Q. And you talked about contacting Wesley Halprin,  
09:37AM 13 the brother.

09:37AM 14 A. Correct.

09:37AM 15 Q. Did you contact the natural father?

09:37AM 16 A. No.

09:37AM 17 Q. There were -- I believe in Dr. Goodness' report  
09:37AM 18 she lists a number of witnesses that she spoke to.

09:37AM 19 THE COURT: Excuse me, Mr. Anton.

09:37AM 20 Just to be clear, did you attempt to find  
09:37AM 21 the natural father and was unable to or did you not  
09:37AM 22 attempt to?

09:37AM 23 THE WITNESS: Judge, I don't recall ever  
09:37AM 24 any conversation about the natural father.

09:37AM 25 THE COURT: Thank you. Go ahead, Mr.

09:37AM 1 Anton.

09:37AM 2 Q. (By Mr. Anton) For the ones that you were able  
09:38AM 3 to contact, Wesley Halprin and Anna Lester, did you  
09:38AM 4 subpoena them?

09:38AM 5 A. No.

09:38AM 6 Q. Was there a reason that they were not  
09:38AM 7 subpoenaed?

09:38AM 8 A. Yes.

09:38AM 9 Q. What is that?

09:38AM 10 A. After Dr. Goodness had spoken at length on  
09:38AM 11 several occasions with Wesley and Anna Lester and they  
09:38AM 12 were very positive and they were very ready to go on  
09:38AM 13 board and help us, at least in her opinion, I think the  
09:38AM 14 State paid them a visit. I think it was Toby Shook and  
09:38AM 15 at least a couple of investigators.

09:38AM 16 It was Dr. Goodness' opinion that they had  
09:39AM 17 been somewhat intimidated and I don't mean physically  
09:39AM 18 intimidated, "If you come to court we're going to do  
09:39AM 19 something to you," but just made to feel small, made to  
09:39AM 20 feel inadequate, made to feel like they wouldn't help.

09:39AM 21 And then they started, as I described,  
09:39AM 22 flaking out on us. They stopped returning Dr. Goodness'  
09:39AM 23 calls. They kind of hid out from us when we went to try  
09:39AM 24 to see them. And in my opinion one of the worst  
09:39AM 25 witnesses that you could have is a punishment witness

09:39AM 1 that is not really familiar with the defendant, is not  
09:39AM 2 really familiar with the crimes that the defendant has  
09:39AM 3 been convicted of or in any way is reluctant in their  
09:39AM 4 testimony, they're not confident, they're not feeling  
09:40AM 5 helpful.

09:40AM 6 That's just my opinion. And when they  
09:40AM 7 totally switched on us and totally switched their  
09:40AM 8 position, then I decided not to call them.

09:40AM 9 MR. ANTON: May I approach briefly, Your  
09:40AM 10 Honor?

09:40AM 11 Q. (By Mr. Anton) If you look at page 3 of her  
09:40AM 12 report and the top of page 4 she lists a number of  
09:40AM 13 witnesses and categorized them in two groups: those  
09:40AM 14 contacted and those in which unsuccessful attempts were  
09:40AM 15 made. You recognize that list?

09:40AM 16 A. Yes.

09:40AM 17 Q. Does that seem to be a complete list of the  
09:40AM 18 witnesses that you had discussed with her about  
09:40AM 19 contacting?

09:40AM 20 A. It's more thorough than I remember.

09:40AM 21 Q. Okay. For the ones it says "third party  
09:41AM 22 contacted," did you contact those witnesses  
09:41AM 23 independently or do you know if she made contact or you  
09:41AM 24 both made contact?

09:41AM 25 A. Dr. Goodness made all contacts with those

09:41AM 1 witnesses other than the individual that we eventually  
09:41AM 2 called. And I believe I talked to Wesley Halprin's  
09:41AM 3 girlfriend. I don't think I ever actually talked to  
09:41AM 4 Wesley myself. And I know I didn't talk to any of the  
09:41AM 5 other witnesses.

09:41AM 6 Q. Okay. In preparation for your presentation at  
09:41AM 7 the mitigation stage then what was the strategic  
09:41AM 8 thinking in having the contact of the witnesses, the  
09:41AM 9 initial screening, however you want to call it,  
09:41AM 10 originally done exclusively by Dr. Goodness?

09:41AM 11 A. Well, that's kind of what we hired her for and  
09:42AM 12 that's what she did. And so we left it to her to find  
09:42AM 13 people who we thought would help us and we make the  
09:42AM 14 decision as to whether we would call them or not.

09:42AM 15 Q. I guess my question was was there any  
09:42AM 16 second-guessing of any of her decisions? When she would  
09:42AM 17 say to you -- let me rephrase that.

09:42AM 18 Based on your previous answers I'm assuming  
09:42AM 19 that she told you at some point that she felt that Anna  
09:42AM 20 Lester was flaking out, to use your term.

09:42AM 21 A. Correct.

09:42AM 22 Q. Was there -- what was the thinking about, you  
09:42AM 23 know, just accepting that or saying, "Well, I need to go  
09:42AM 24 contact her myself, make an independent determination"?

09:42AM 25 A. Well, I trusted her. I mean, as I said, she



09:42AM 1 had talked to either Wesley or Wesley's girlfriend and  
09:42AM 2 Anna Lester more than once. She had talked with them at  
09:43AM 3 length. She was very positive about -- well, she was  
09:43AM 4 positive about Anna Lester.

09:43AM 5 Wesley was always somewhat apprehensive. I  
09:43AM 6 believe Wesley was on probation out of another county  
09:43AM 7 and he was afraid that coming to court might somehow  
09:43AM 8 jeopardize his probation. He thought the State might  
09:43AM 9 lean on him, revoke his probation in the other county.  
09:43AM 10 So he was always reluctant.

09:43AM 11 But we were positive about the aspects of  
09:43AM 12 calling them until this episode with the State and they  
09:43AM 13 just totally shifted their attitude on us at that point  
09:43AM 14 in time.

09:43AM 15 Q. Okay. I want to be clear about this when we  
09:43AM 16 say exclusive contact through Dr. Goodness. You have an  
09:44AM 17 investigator, Bill Hunt, I believe, helping you.

09:44AM 18 A. Correct.

09:44AM 19 Q. He didn't contact these people directly either?

09:44AM 20 A. You know, I don't remember but in actually  
09:44AM 21 talking to Bill this week, I think Bill said that he did  
09:44AM 22 go out there. I don't know if he went out there with  
09:44AM 23 Dr. Goodness or he helped Dr. Goodness to make contact  
09:44AM 24 or he went out there on his own. I assume he probably  
09:44AM 25 did it with Dr. Goodness. I didn't remember him going

09:44AM 1 out there but he said he did.

09:44AM 2 THE COURT: Out where?

09:44AM 3 THE WITNESS: To make contact with Randy's  
09:44AM 4 mother and brother.

09:44AM 5 THE COURT: Where were they located?

09:44AM 6 THE WITNESS: I don't recall. It wasn't  
09:44AM 7 far, in Dallas County or the metroplex somewhere, I  
09:44AM 8 believe.

09:44AM 9 Q. (By Mr. Anton) There's also -- if you want to  
09:44AM 10 look at the list again, there's a number of witnesses  
09:44AM 11 that she was unable to locate. Do you know if Mr. Hunt  
09:44AM 12 made an independent effort to locate these witnesses?

09:45AM 13 A. I don't believe so. I think if you looked at a  
09:45AM 14 lot of those witnesses, those would have been names from  
09:45AM 15 that Internet communication or names that Randy gave us  
09:45AM 16 that he was giving us at that time which would have  
09:45AM 17 included people that he hasn't had any contact with for  
09:45AM 18 10, 15 years.

09:45AM 19 Q. Now, as lead chair in a death penalty case  
09:45AM 20 obviously you've had experience in other death penalty  
09:45AM 21 litigation; is that right?

09:45AM 22 A. In one. This was my second.

09:45AM 23 Q. This was your second one?

09:45AM 24 A. Yes.

09:45AM 25 Q. Okay. And I assume that you have gone -- I

09:45AM 1 think you're required to go to a lot of CLE and training  
09:45AM 2 in death penalty.

09:45AM 3 A. Correct.

09:45AM 4 Q. A lot of that training is also centered on  
09:46AM 5 presentation of mitigation defense.

09:46AM 6 A. Correct.

09:46AM 7 Q. And do you agree with the proposition that a  
09:46AM 8 lot of punishment evidence, particularly in the  
09:46AM 9 mitigation phase of a death penalty, is a two-edged  
09:46AM 10 sword?

09:46AM 11 A. Could help you; could hurt you.

09:46AM 12 Q. Most of the witnesses -- the person's on Death  
09:46AM 13 Row usually primarily because they have a criminal past;  
09:46AM 14 is that correct?

09:46AM 15 A. Correct.

09:46AM 16 Q. They have mental, emotional problems, correct?

09:46AM 17 A. Correct.

09:46AM 18 Q. They have drug abuse problems?

09:46AM 19 A. Correct.

09:46AM 20 Q. And so a lot of the people that have known them  
09:46AM 21 in their past, a lot of people would talk about that  
09:46AM 22 background. If they presented it, it's not going to be  
09:46AM 23 favorable in some regard to the defense; is that right?

09:46AM 24 A. I understand what you're saying.

09:46AM 25 Q. Right. How do you feel about that?

09:46AM 1 A. Didn't apply to the witnesses I was just  
09:46AM 2 talking about. Okay? I wasn't calling a psychiatrist  
09:47AM 3 to say that, you know, Randy had mental issues that  
09:47AM 4 caused him to do what he did. I wasn't calling someone  
09:47AM 5 to say that he was abused as a child.

09:47AM 6 Actually, I was looking for somebody to say  
09:47AM 7 that he might have been emotionally abused in the way he  
09:47AM 8 was dealt with in terms of his adoptive parents but I  
09:47AM 9 wouldn't have been calling those family members for that  
09:47AM 10 particular purpose.

09:47AM 11 I would have been calling those family  
09:47AM 12 members primarily for emotional support. His brother  
09:47AM 13 would have just been backing up, you know, how they were  
09:47AM 14 treated, so forth and so on. And it wasn't that they  
09:47AM 15 were going to say something negative that, you know,  
09:47AM 16 Randy killed cats when he was a kid and I was afraid of  
09:48AM 17 that.

09:48AM 18 I didn't want a family member, somebody  
09:48AM 19 that I am calling to support this person, to get up  
09:48AM 20 there and be wavering and be cowering under Toby Shook's  
09:48AM 21 cross-examination. I just think that has a bad, bad  
09:48AM 22 effect as far as the jury is concerned when you call  
09:48AM 23 somebody to support somebody and they get up there and  
09:48AM 24 they do the exact opposite or they act like they're not  
09:48AM 25 confident in their support of the person.

09:48AM 1 Q. And it's a strategic decision not to call  
09:48AM 2 somebody that's going to undermine your case or  
09:48AM 3 presentation.

09:48AM 4 A. Correct.

09:48AM 5 Q. Dr. Goodness' role as a mitigation expert was  
09:48AM 6 to cobble together the witnesses and the documents  
09:48AM 7 necessary to present a background showing the abuse and  
09:48AM 8 drug abuse and history that he had; is that right?

09:49AM 9 A. Partially, yes.

09:49AM 10 Q. Her role wasn't actually witness preparation,  
09:49AM 11 was it?

09:49AM 12 A. No.

09:49AM 13 Q. Okay. Whose role should witness preparation  
09:49AM 14 be?

09:49AM 15 A. Counsel.

09:49AM 16 Q. At the mitigation seminars that are taught they  
09:49AM 17 teach, don't they, that dealing with mitigation  
09:49AM 18 witnesses is a process that you have to have numerous  
09:49AM 19 contact with them and build an attitude of trust and  
09:49AM 20 work with them in order to get them shaped up? You  
09:49AM 21 agree with that?

09:49AM 22 A. I don't know that I have heard that  
09:49AM 23 specifically but I wouldn't disagree with that.

09:49AM 24 Q. Particularly in a death penalty case if you  
09:49AM 25 have somebody that's going to be -- initially appears to

09:50AM 1 be a bad witness, would you agree there's some  
09:50AM 2 obligation to -- well, first of all, in terms of them  
09:50AM 3 being a bad witness, would you agree the proposition  
09:50AM 4 that many witnesses are distrustful of the process at  
09:50AM 5 the start?

09:50AM 6 A. Absolutely.

09:50AM 7 Q. Would you agree that it takes some work to get  
09:50AM 8 them beyond that?

09:50AM 9 A. Possibly.

09:50AM 10 Q. How much, if you can recall, if it's reflected  
09:50AM 11 in your notes or time sheets or pay sheets, whatever --  
09:50AM 12 is there anything to show how many times you had contact  
09:50AM 13 with Anna Lester as a potential witness?

09:50AM 14 A. I could tell you I never spoke to Anna Lester.  
09:50AM 15 I could tell you I never spoke to Wesley Halprin. I  
09:50AM 16 believe I spoke to Wesley Halprin's girlfriend who was  
09:50AM 17 the person who was always calling and speaking on his  
09:51AM 18 behalf and the person I was always trying to convince to  
09:51AM 19 get him to come and talk to us.

09:51AM 20 Q. Was there any effort to work with Wesley  
09:51AM 21 Halprin as a witness?

09:51AM 22 A. We trusted Dr. Goodness. As I testified, when  
09:51AM 23 that broke down I didn't personally make any effort to  
09:51AM 24 talk to those individuals.

09:51AM 25 Q. Do you think it was communicated to Dr.

09:51AM 1 Goodness that part of her role was to prepare these  
09:51AM 2 people as witnesses, that she would be the one making  
09:51AM 3 the decision about who to call or not to call?

09:51AM 4 A. No.

09:51AM 5 Q. Now, in putting the defense mitigation case  
09:51AM 6 together, if I understood previously, a lot of focus was  
09:52AM 7 going to be upon their interaction with their natural  
09:52AM 8 parents before they were adopted and what happened to  
09:52AM 9 them in that home before they were adopted; is that  
09:52AM 10 right?

09:52AM 11 A. From Wesley. I believe truly all that Anna  
09:52AM 12 Lester was going to do for us was come in and say that,  
09:52AM 13 you know, "Our circumstances were really bad. I gave my  
09:52AM 14 kids up for adoption. You know, I was in a real bad way  
09:52AM 15 in terms of my situation at the time but I love my son.  
09:52AM 16 Spare his life."

09:52AM 17 Wesley would have been able to more develop  
09:52AM 18 the theory of how poorly they were treated by the  
09:52AM 19 adoptive parents emotionally, kind of adopted and then  
09:53AM 20 basically thrown out and -- like some unwanted pets and  
09:53AM 21 the family actually adopted some new, better,  
09:53AM 22 super-improved kids.

09:53AM 23 MR. ANTON: May I approach the witness,  
09:53AM 24 Your Honor? Got one big binder here I'm going to call  
09:53AM 25 Defendant's Hearing Exhibit Number 2.

09:53AM 1 Q. (By Mr. Anton) These purport to be all the  
09:53AM 2 records related to the adoption.

09:54AM 3 A. Okay.

09:54AM 4 MR. ANTON: We offer these.

09:54AM 5 MS. SMITH: No objection.

09:54AM 6 THE COURT: They're admitted.

09:54AM 7 (Defendant's Exhibit 2 admitted into  
09:54AM 8 evidence and is attached to this  
09:54AM 9 transcript.)

09:54AM 10 Q. (By Mr. Anton) Did you have an opportunity to  
09:54AM 11 review these prior to the trial?

09:54AM 12 A. Yes. And based on the number stamped on the  
09:54AM 13 bottom of them I can further answer your question that  
09:54AM 14 we received them from the State rather than us getting  
09:54AM 15 them ourselves.

09:54AM 16 Q. Would you agree that in the adoption records  
09:54AM 17 that have been presented before the Court that there's a  
09:55AM 18 number of specific incidents alleged of the abuse that  
09:55AM 19 the children suffered, the drugs consumed by the  
09:55AM 20 parents, that they bounced around between homes, issues  
09:55AM 21 to that effect?

09:55AM 22 A. I don't remember specifically but I wouldn't  
09:55AM 23 dispute that.

09:55AM 24 Q. Okay. Well, do you recall getting the  
09:55AM 25 information contained in those adoption records before



09:55AM 1 the Court was part of your strategy at mitigation?

09:55AM 2 A. Yes.

09:55AM 3 Q. The witnesses that would have known about that  
09:55AM 4 or could have testified about that at the time would  
09:55AM 5 include the natural mother and the natural father and  
09:55AM 6 Wesley to some extent; is that right?

09:55AM 7 A. Correct.

09:55AM 8 Q. And there would be additional family members  
09:55AM 9 listed in the adoption records and the police reports  
09:56AM 10 that are contained within the adoption records regarding  
09:56AM 11 the abuse that took place; is that right?

09:56AM 12 A. If those are in there. I don't remember but --

09:56AM 13 Q. Well, I understand it's been a long time. I  
09:56AM 14 guess the question is looking back, was getting the  
09:56AM 15 information contained in those adoption records, was  
09:56AM 16 that a key part of the strategy or just additional  
09:56AM 17 information that's not what you were focusing on?

09:56AM 18 A. I don't know how to answer that. I mean if any  
09:56AM 19 witness contained in there could have helped advance the  
09:56AM 20 strategy, then it would be a key part of the strategy.

09:56AM 21 Q. Now, if the witnesses themselves were not going  
09:56AM 22 to be called at trial to testify about the events  
09:56AM 23 contained in the adoption records, alternatively that  
09:57AM 24 information could have gotten before the jury by  
09:57AM 25 introducing the adoption records themselves; is that

09:57AM 1 correct?

09:57AM 2 A. That's correct.

09:57AM 3 Q. Okay. But the adoption records were never

09:57AM 4 actually offered; is that correct?

09:57AM 5 A. That's correct.

09:57AM 6 Q. What was the reason for that?

09:57AM 7 A. Probably only thing that I can tell you is that  
09:57AM 8 the fact that he had been adopted was not disputed and  
09:57AM 9 so we didn't offer them to prove that he had in fact  
09:57AM 10 been adopted and therefore that would have been the only  
09:57AM 11 reason we didn't offer them.

09:57AM 12 Q. Okay. But would you agree that other than the  
09:57AM 13 fact of the adoption, those documents, including the  
09:57AM 14 social studies, contain detailed histories and family  
09:57AM 15 accounts of the abuse that Randy was subjected to -- Mr.  
09:58AM 16 Halprin was subjected to at an early age?

09:58AM 17 A. I don't remember but I don't dispute that they  
09:58AM 18 probably do.

09:58AM 19 Q. Would it have enhanced your mitigation  
09:58AM 20 presentation to get that information before the jury?

09:58AM 21 A. Yes.

09:58AM 22 Q. And was there a reason that those documents  
09:58AM 23 were not admitted?

09:58AM 24 A. No.

09:58AM 25 Q. Was there a strategic reason those documents

09:58AM 1 were not offered?

09:58AM 2 A. No.

09:58AM 3 Q. Now, essentially then Dr. Goodness'  
09:58AM 4 presentation -- once the decision is made not to call  
09:58AM 5 some of the other members because they might be flaky  
09:58AM 6 witnesses, then the information is going to come through  
09:58AM 7 Dr. Goodness' report or not at all; is that right?

09:58AM 8 A. Yes.

09:58AM 9 Q. And in regard to making her presentation she  
09:59AM 10 brought -- the records that she relied on were available  
09:59AM 11 in court at the time of the hearing?

09:59AM 12 A. Correct.

09:59AM 13 Q. And in addition to that, she had prepared a  
09:59AM 14 Power Point presentation?

09:59AM 15 A. Correct.

09:59AM 16 Q. Now, I assume that you had -- had you studied  
09:59AM 17 the law regarding the necessary predicates for admission  
09:59AM 18 of her report and underlying information?

09:59AM 19 A. I believe so.

09:59AM 20 Q. What was your understanding of what it would  
09:59AM 21 take for Dr. Goodness to be able to give her report,  
09:59AM 22 including specifications of the underlying data that she  
09:59AM 23 used to formulate her opinions?

09:59AM 24 A. I don't really recall.

09:59AM 25 Q. Based on your experience were you assuming that

09:59AM 1 if you proved up Dr. Goodness as the mitigation expert  
10:00AM 2 and you established the documents that she had reviewed  
10:00AM 3 that she would be able to testify and refer to specific  
10:00AM 4 incidents contained in those documents?

10:00AM 5 A. I don't recall what I -- what I thought at the  
10:00AM 6 time. Probably so.

10:00AM 7 Q. And I want you to understand I'm not trying to  
10:00AM 8 trick you or trap you into anything. If you don't  
10:00AM 9 understand what I am asking, let me know.

10:00AM 10 A. I understand what you are asking. I can't  
10:00AM 11 answer your question as to what preparation I had done  
10:00AM 12 at the time in terms of admissibility of her report.

10:00AM 13 Q. Let me jump ahead and we'll come back.  
10:00AM 14 Ultimately at trial when she attempted to be in a sub  
10:00AM 15 rosa hearing before she testified Judge Cunningham  
10:00AM 16 precluded her from referencing any specific conduct.  
10:01AM 17 She could give her opinions but she couldn't tell --  
10:01AM 18 relate to the specific evidence that she was relying on  
10:01AM 19 to support those opinions. Do you recall that?

10:01AM 20 A. I do.

10:01AM 21 Q. Were you expecting that or did that take you  
10:01AM 22 back?

10:01AM 23 A. I'm sure it took me aback.

10:01AM 24 Q. And did you feel that Judge Cunningham was  
10:01AM 25 wrong on the law in that regard?

10:01AM 1 A. I don't recall but I'm sure I probably did at  
10:01AM 2 the time.

10:01AM 3 Q. And if he was in fact wrong it would have been  
10:01AM 4 important to make objections to that ruling?

10:01AM 5 A. Yes.

10:01AM 6 Q. That would have been an issue that would have  
10:01AM 7 been on appeal?

10:01AM 8 A. Correct.

10:01AM 9 Q. And would you agree that Dr. Goodness'  
10:01AM 10 inability to present her report significantly damaged  
10:01AM 11 your mitigation presentation?

10:02AM 12 A. I would.

10:02AM 13 Q. Would you agree that was prejudicial to Mr.  
10:02AM 14 Halprin's punishment presentation?

10:02AM 15 A. I believe so.

10:02AM 16 Q. At the point in time where -- again if I am not  
10:02AM 17 stating this correctly, let me know. By the time you  
10:02AM 18 arrive at trial the defense presentation is to get Dr.  
10:02AM 19 Goodness' report and underlying data before the jury.  
10:02AM 20 That's plan A?

10:02AM 21 A. Correct.

10:02AM 22 Q. Just before she testifies the Judge rules that  
10:02AM 23 plan A is not going to work, right?

10:02AM 24 A. As far as I can remember. I thought it was  
10:02AM 25 actually during her testimony but you mean at a sub rosa

10:02AM 1 hearing?

10:02AM 2 Q. Yeah.

10:02AM 3 A. Okay.

10:02AM 4 Q. Was there a plan B?

10:03AM 5 A. Plan B was the live witness that we actually  
10:03AM 6 called and got to come up here from Shreveport.

10:03AM 7 Q. Okay.

10:03AM 8 A. I also believe that through the course of the  
10:03AM 9 trial a lot of things that came in or attempted to come  
10:03AM 10 in got across to the jury. I would also add that part  
10:03AM 11 of our mitigation was not just what happened to Randy in  
10:03AM 12 the past, but his limited role in the actual capital  
10:03AM 13 murder that he was charged with.

10:03AM 14 Q. Okay.

10:03AM 15 A. That came in during the course of the trial.

10:03AM 16 Q. So I mean -- so back to the previous question,  
10:03AM 17 given all of the circumstances of the trial, are you  
10:04AM 18 saying in your opinion the failure to get her mitigation  
10:04AM 19 report in front of the jury was not ultimately  
10:04AM 20 prejudicial to Randy?

10:04AM 21 A. It hurt.

10:04AM 22 Q. At the point in time -- did you understand a  
10:04AM 23 point in time where the State is objecting -- I think  
10:04AM 24 specifically Ms. Smith is objecting that if you are  
10:04AM 25 going to let Kelly Goodness, Dr. Goodness, testify about

10:04AM 1 the abuse, that you have to call the witness who told  
10:04AM 2 her about the witness so we can confront that witness.  
10:04AM 3 Did you understand that essentially to be her objection?

10:04AM 4 A. Correct.

10:04AM 5 Q. At that point as an alternative to get Dr.  
10:04AM 6 Goodness' report in front of the jury it would have been  
10:04AM 7 necessary to call the witnesses then in order to salvage  
10:04AM 8 the report, right?

10:04AM 9 A. Correct.

10:04AM 10 Q. Was there a reason -- I understand that was not  
10:04AM 11 your primary strategy. This was a fall-back position,  
10:05AM 12 right? Have to say yes or no.

10:05AM 13 A. Yes.

10:05AM 14 Q. Is there a reason that you didn't go to that  
10:05AM 15 fall-back position then and put those witnesses on the  
10:05AM 16 stand?

10:05AM 17 A. Specifically Anna Lester or Wesley Halprin?

10:05AM 18 Q. The witnesses to who could have testified to  
10:05AM 19 the contents of the adoption records.

10:05AM 20 A. As to Anna Lester or Wesley Halprin I would say  
10:05AM 21 the same. Strategically, I guess we could have called  
10:05AM 22 them to cure Dr. Goodness' problem but I still would  
10:05AM 23 have felt uncomfortable with the way they had changed  
10:05AM 24 their stance, the way I felt they had been intimidated  
10:05AM 25 by Toby Shook.

10:05AM 1 I think Toby Shook actually told me the  
10:05AM 2 specific conversations he had with them and how they  
10:05AM 3 reacted and how inadequate I felt that they would have  
10:06AM 4 felt as witnesses and how that would have hurt us more  
10:06AM 5 than helped us. And as to any of the other witnesses, I  
10:06AM 6 couldn't say because I don't really think we were really  
10:06AM 7 successful in locating a lot of those other individuals.

10:06AM 8 Q. Obviously, Dr. Goodness had contacted them in  
10:06AM 9 order to include some of these materials in her report,  
10:06AM 10 correct?

10:06AM 11 A. Well, either she had contacted them or she had  
10:06AM 12 read the reports. I'm not sure.

10:06AM 13 Q. As a third alternative to calling the live  
10:06AM 14 witnesses, the adoption records could have come into  
10:06AM 15 evidence with a sponsoring witness from the various  
10:06AM 16 agencies. Is that a possibility?

10:06AM 17 A. Yes.

10:06AM 18 Q. Was there a reason that that wasn't done?

10:06AM 19 A. No.

10:07AM 20 THE COURT: Let me ask a question because  
10:07AM 21 both you lawyers -- all you lawyers know more about  
10:07AM 22 appellate matters than I do regarding that. Was this  
10:07AM 23 trial before or after Crawford?

10:07AM 24 MR. ANTON: I believe this trial was before  
10:07AM 25 Crawford.



10:07AM 1 MS. SMITH: I think that's accurate.

10:07AM 2 THE COURT: Go ahead.

10:07AM 3 THE WITNESS: No doubt it was before  
10:07AM 4 Crawford.

10:07AM 5 Q. (By Mr. Anton) Now, going back to Judge  
10:07AM 6 Cunningham's ruling, did you understand the law to be  
10:07AM 7 the punishment phase of a death penalty case in  
10:07AM 8 mitigation that the constitutional right to present a  
10:08AM 9 defense may in some circumstances supersede Rules of  
10:08AM 10 Evidence?

10:08AM 11 A. Absolutely.

10:08AM 12 Q. And did you attempt to make that argument to  
10:08AM 13 the Court about why these -- her testimony should be  
10:08AM 14 admitted?

10:08AM 15 A. I think I attempted -- I know that I made that  
10:08AM 16 argument as to the document that we were trying to get  
10:08AM 17 into evidence that he kept denying. Whether I made it  
10:08AM 18 as to Dr. Goodness' presentation or not, I don't recall.  
10:08AM 19 But I'm sure you looked at the record and if I did make  
10:08AM 20 it, I did make it.

10:08AM 21 Q. Did you play any role in the selection of  
10:08AM 22 issues to be pursued on appeal?

10:09AM 23 A. No.

10:09AM 24 Q. You understand that the decision -- that Judge  
10:09AM 25 Cunningham's decision not to admit this evidence at the

10:09AM 1 punishment phase of trial, that that issue was not  
10:09AM 2 pursued on appeal?

10:09AM 3 A. Yes.

10:09AM 4 Q. What was the reason, if you know, that that  
10:09AM 5 issue was rejected as an appellate issue?

10:09AM 6 A. I don't believe it was rejected. Mr. Muhammed  
10:09AM 7 informed me prior to working on the brief that he had  
10:09AM 8 read several capital briefs. His approach was going to  
10:09AM 9 be to raise issues that were presented by the evidence,  
10:09AM 10 that he wasn't going to do a whole bunch of the same  
10:10AM 11 constitutional arguments that he read that lawyers do  
10:10AM 12 over and over and over and get denied and denied and  
10:10AM 13 denied.

10:10AM 14 And so the first part of his brief wasn't  
10:10AM 15 going to be 10, 12 constitutional issues. His brief was  
10:10AM 16 going to be probably those types of issues. Now, once  
10:10AM 17 he started working on the brief he started at the  
10:10AM 18 beginning. He started with the jury selection and he  
10:10AM 19 raised all of the issues that he thought he could raise  
10:10AM 20 as to the jury selection.

10:10AM 21 And then he kept getting notices from the  
10:10AM 22 Court of Criminal Appeals to submit the brief before he  
10:10AM 23 was ready to submit the brief. He submitted the issues  
10:10AM 24 that he had prepared. He tried to get an extension of  
10:11AM 25 time to submit additional issues. He tried to

10:11AM 1 supplement the brief with additional issues and he was  
10:11AM 2 denied at the Court of Criminal Appeals.

10:11AM 3 Q. So again if you don't know the answer to this  
10:11AM 4 question that's fine but the fact that that issue didn't  
10:11AM 5 then get into the brief, is that because Mr. Muhammed  
10:11AM 6 got so busy that he just didn't have time to include it?

10:11AM 7 A. I think he got forced to file a brief before he  
10:11AM 8 was fully prepared to submit the brief as to all of the  
10:11AM 9 issues that he would have liked to have raised.

10:11AM 10 Q. Well, if you were right on the law that Judge  
10:12AM 11 Cunningham erred in not letting Kelly Goodness present  
10:12AM 12 the data and the facts supporting her mitigation  
10:12AM 13 conclusions, if you were right that the Judge erred in  
10:12AM 14 excluding that, then that would have been a good  
10:12AM 15 appellate issue, don't you think?

10:12AM 16 A. Absolutely.

10:12AM 17 Q. Mitigation being one of the hot topics that  
10:12AM 18 both the state and federal courts look at in evaluating  
10:12AM 19 death penalty review?

10:12AM 20 A. Absolutely.

10:12AM 21 Q. And so as you sit here there's no strategic  
10:12AM 22 reason why that was left out?

10:12AM 23 A. No.

10:12AM 24 Q. And it's been a long time since you personally  
10:12AM 25 reviewed the record but in your opinion do you think

10:12AM 1 that issue was validly prepared and raised and preserved  
10:12AM 2 for appeal?

10:12AM 3 A. Like I say, I don't remember my objection. As  
10:13AM 4 to the other issue of the document, Mr. Udashen provided  
10:13AM 5 me a copy of my objection which was single spaced about  
10:13AM 6 a page long. And I remember at that point I believe I  
10:13AM 7 was telling the Judge, you know, anything in punishment  
10:13AM 8 in a capital murder case should be admitted despite the  
10:13AM 9 Rules of Evidence. But I don't know if I was that  
10:13AM 10 specific as to Dr. Goodness' presentation.

10:13AM 11 Q. Would you agree as the trial attorney that that  
10:13AM 12 was an issue in which it would be necessary to make a  
10:13AM 13 proper objection -- preservation of that particular  
10:13AM 14 issue for appeal would have been tantamount -- paramount  
10:13AM 15 importance?

10:13AM 16 A. I believe so but I believe the Judge's improper  
10:14AM 17 ruling in and of itself probably was sufficient to  
10:14AM 18 preserve that issue on appeal. I believe the law was  
10:14AM 19 clear on that.

10:14AM 20 Q. If the Judge ruled wrongly based on a valid  
10:14AM 21 objection, that would have been appellate error?

10:14AM 22 A. Correct.

10:14AM 23 Q. And again -- I know what you said, that you  
10:14AM 24 designated Mr. Muhammed to do the appeal but did you  
10:14AM 25 ever have an opportunity as lead counsel to sit down

10:14AM 1 with him and say, "This issue on the Judge's mitigation  
10:14AM 2 ruling really needs to go in the brief"?

10:14AM 3 A. I know I discussed with him the fact that in a  
10:14AM 4 capital murder case mitigation evidence should be  
10:14AM 5 admitted even if sometimes the Rules of Evidence have to  
10:14AM 6 be scurried. I had read that and researched that and  
10:15AM 7 told him that was a primary issue for our appeal.

10:15AM 8 Q. Let me ask you this if you can put yourself  
10:15AM 9 back in time. But at the time that you were getting  
10:15AM 10 ready to put Kelly Goodness on as a witness had you  
10:15AM 11 anticipated that the State would make any kind of  
10:15AM 12 argument like that, that this is hearsay and it's not  
10:15AM 13 coming in without the witnesses?

10:15AM 14 A. I don't recall.

10:15AM 15 Q. I mean -- you don't recall. I mean when you  
10:15AM 16 say that, that means to me you hadn't necessarily  
10:15AM 17 briefed that issue in advance or it wasn't uppermost in  
10:15AM 18 your mind. Would you have been saying, "I know this is  
10:15AM 19 coming"?

10:15AM 20 A. I don't recall. I don't think so.

10:15AM 21 THE COURT: Excuse me, Mr. Anton.

10:15AM 22 Mr. Ashford, I'm assuming that in  
10:15AM 23 preparation for this trial you read the transcripts of  
10:15AM 24 the four previous Texas Seven trials; is that correct?

10:16AM 25 THE WITNESS: Yes.

10:16AM 1 THE COURT: Do you recall whether this  
10:16AM 2 issue came up in any of the previous four trials?

10:16AM 3 THE WITNESS: I don't.

10:16AM 4 THE COURT: Do you remember or do you think  
10:16AM 5 it --

10:16AM 6 THE WITNESS: I don't remember at all. I  
10:16AM 7 remember in reading the previous transcripts I mainly  
10:16AM 8 concentrated, of course, more on the facts of the  
10:16AM 9 offense than I did the other individuals' mitigation.

10:16AM 10 THE COURT: So you can't tell me one way or  
10:16AM 11 the other whether it came up in any of the previous  
10:16AM 12 trials?

10:16AM 13 THE WITNESS: Correct.

10:16AM 14 THE COURT: Or whether you knew it came --

10:16AM 15 THE WITNESS: Correct.

10:16AM 16 Q. (By Mr. Anton) We're confused at this table.  
10:16AM 17 Re-ask this question. You were appointed as the lead  
10:16AM 18 appellate attorney; is that right?

10:16AM 19 A. Correct.

10:16AM 20 Q. I would like to move on to the charge issues  
10:17AM 21 regarding anticipation. What's -- what's your  
10:17AM 22 understanding of what the State must prove for a  
10:17AM 23 non-shooter to be assessed the death penalty in Texas?

10:17AM 24 A. I'm not sure I understand the question.

10:17AM 25 Q. You're familiar with the Edmonds and Tyson

10:17AM 1 cases from the Supreme Court about anticipation.

10:17AM 2 A. Yes.

10:17AM 3 Q. As a general statement, in order to answer the  
10:17AM 4 special issues at the punishment phase it's not enough  
10:17AM 5 to show that the accused could have anticipated, that  
10:18AM 6 there's some burden of showing that he in fact did  
10:18AM 7 anticipate?

10:18AM 8 A. My understanding was that he could have  
10:18AM 9 anticipated, not that he did anticipate.

10:18AM 10 Q. There's also a distinction between the shooter  
10:18AM 11 and a non-shooter; is that right?

10:18AM 12 A. Correct.

10:18AM 13 Q. In your presentation of the case were you  
10:18AM 14 concerned with showing that Mr. Halprin was not a  
10:18AM 15 shooter?

10:18AM 16 A. Yes.

10:18AM 17 Q. Now, in that regard I think you previously  
10:18AM 18 answered some interrogatories. Do you recall that?

10:18AM 19 A. Yes.

10:18AM 20 Q. I think that your answer to the interrogatories  
10:19AM 21 as to his role in the offense -- you stated Mr. King had  
10:19AM 22 advised you that Mr. Halprin had shot himself in the  
10:19AM 23 foot?

10:19AM 24 A. Correct.

10:19AM 25 Q. I assume that in presentation of the case and

10:19AM 1 discussions with counsel, as well as with the witnesses,  
10:19AM 2 that Mr. Halprin's role in the shooting would have been  
10:19AM 3 a topic of a lot of discussion.

10:19AM 4 A. Yes.

10:19AM 5 Q. And whether he fired a gun would have been a  
10:19AM 6 topic of a lot of discussion.

10:19AM 7 A. Yes.

10:19AM 8 Q. Did you specifically address that with Mr.  
10:19AM 9 Halprin?

10:19AM 10 A. If I can specifically remember having any  
10:19AM 11 conversation with him, no, but I would almost certainly  
10:20AM 12 think that I did.

10:20AM 13 Q. Okay. Was that primarily because, as you  
10:20AM 14 stated, Mr. King was the one who was responsible for  
10:20AM 15 preparation of Mr. Halprin as a witness?

10:20AM 16 A. Correct.

10:20AM 17 Q. Did you take notes about your conversations  
10:20AM 18 with Mr. King -- with Mr. King about Mr. Halprin's role  
10:20AM 19 in the shooting?

10:20AM 20 A. No.

10:20AM 21 Q. But you're certain your recollection is that  
10:20AM 22 Mr. King told you that Randy had admitted -- Randy  
10:20AM 23 Halprin had admitted shooting himself in the foot?

10:20AM 24 A. That is my recollection after Mr. King came  
10:20AM 25 back from visiting Mr. Halprin in Colorado.



10:20AM 1 Q. How did that affect this subsequent preparation  
10:20AM 2 and presentation of the defense?

10:21AM 3 A. I don't know what you are asking me.

10:21AM 4 Q. Well, did it change your strategy at all in  
10:21AM 5 terms of how you argue and present evidence to the jury?  
10:21AM 6 Did you more or less give up on the non-shooter  
10:21AM 7 argument? What was the overall strategy at that point  
10:21AM 8 in terms of Mr. Halprin's role in the offense?

10:21AM 9 A. Our strategy was Mr. Halprin didn't shoot  
10:21AM 10 Officer Hawkins, didn't shoot at Officer Hawkins, didn't  
10:21AM 11 play a major role in intimidating Oshman's employees,  
10:21AM 12 placing guns on Oshman's employees, et cetera.

10:21AM 13 Q. Would it have strengthened that presentation if  
10:21AM 14 a factual showing could be made that Randy Halprin did  
10:21AM 15 not discharge his gun in any fashion?

10:21AM 16 A. Well, that would have been a different strategy  
10:21AM 17 but that would have --

10:22AM 18 Q. How is that different?

10:22AM 19 A. If he didn't discharge his gun in any way,  
10:22AM 20 that's better than if he discharged it accidentally and  
10:22AM 21 shot himself in the foot but it's totally different.

10:22AM 22 Q. All right. Okay. Now, were you familiar with  
10:22AM 23 the medical records of the treatment of Randy Halprin's  
10:22AM 24 foot in Colorado?

10:22AM 25 A. Yes.

10:22AM 1 Q. Do you recall the angle of entry in that wound  
10:22AM 2 as depicted in those medical reports?

10:22AM 3 A. I don't.

10:22AM 4 Q. Do you recall in conversations with Mr. King if  
10:22AM 5 it appears that the bullet instead of going down into  
10:22AM 6 the foot went across the foot?

10:22AM 7 A. I know we discussed it. I know Mr. King had a  
10:22AM 8 strong opinion as to that whole foot situation. We  
10:22AM 9 didn't necessarily agree on that.

10:22AM 10 Q. I don't mean to interrupt you. Can you  
10:23AM 11 elaborate on the difference between you and Mr. King's  
10:23AM 12 opinion?

10:23AM 13 A. I didn't think it was really important one way  
10:23AM 14 or the other. I didn't think it was a big deal that he  
10:23AM 15 shot himself in the foot or that someone else shot him  
10:23AM 16 in the foot. I just didn't think it was that big of a  
10:23AM 17 deal. My deal was he didn't shoot Officer Hawkins.

10:23AM 18 Q. Is there -- was there any discussion about  
10:23AM 19 calling -- a decision to call the treating physician in  
10:23AM 20 Colorado as a witness in regard to Mr. Halprin's wound?

10:23AM 21 A. I know, you know, from the transcript we tried  
10:23AM 22 to get that thing admitted and we couldn't because we  
10:23AM 23 didn't have the sponsoring witness. I don't remember  
10:24AM 24 what our conversations were about calling the treating  
10:24AM 25 physician or not.

10:24AM 1 Q. In other words, you couldn't get the medical  
10:24AM 2 records in independently because there wasn't a business  
10:24AM 3 records affidavit or sponsoring witness.

10:24AM 4 A. Correct.

10:24AM 5 Q. Was that a matter of strategy not to get the  
10:24AM 6 sponsoring witness?

10:24AM 7 A. I can't say that it was, no.

10:24AM 8 Q. Just in division of labor between you and Mr.  
10:24AM 9 King in regard to that would that primarily have been  
10:24AM 10 your responsibility or Mr. King's to get Randy Halprin's  
10:24AM 11 medical records into evidence?

10:24AM 12 A. To get his records in evidence?

10:24AM 13 Q. Those specific medical records we're talking  
10:24AM 14 about regarding the injury to the foot.

10:25AM 15 A. Not to throw Mr. King under the bus, that would  
10:25AM 16 have been part of Randy's testimony but I don't recall  
10:25AM 17 our specific conversations about it.

10:25AM 18 Q. So was part of the punishment presentation --  
10:25AM 19 you said part of the mitigation defense was to show  
10:25AM 20 Randy's role in the offense and I guess part of that  
10:25AM 21 presentation was that he was not a shooter; is that  
10:25AM 22 right?

10:25AM 23 A. Not a shooter of Officer Hawkins.

10:25AM 24 Q. Exactly. Did not discharge a weapon with any  
10:25AM 25 kind of felonious criminal intent.

10:25AM 1 A. Correct.

10:25AM 2 Q. That would have been argued in regard to the  
10:26AM 3 special issues regarding his culpability; is that right?  
10:26AM 4 I mean would that have played any role in he didn't  
10:26AM 5 anticipate the death, he didn't shoot, he didn't pull  
10:26AM 6 his gun?

10:26AM 7 A. You mean special issues that we would have  
10:26AM 8 asked to be submitted to the jury other than special  
10:26AM 9 issue 1 and 2?

10:26AM 10 Q. I'm talking about in regard to special issues 1  
10:26AM 11 and 2.

10:26AM 12 A. Ask your question again.

10:26AM 13 Q. Do you think that -- was part of your strategy  
10:26AM 14 in saying, "Don't give Mr. Halprin the death penalty" --  
10:26AM 15 was part of that in how the jury evaluates special  
10:26AM 16 issues number 1 and 2, "Hey, he didn't shoot"?

10:26AM 17 A. Yes.

10:26AM 18 Q. Was that an important part of the argument?

10:26AM 19 A. I believe it was.

10:27AM 20 Q. And do you recall what was your strategy  
10:27AM 21 generally in terms of saying that Randy Halprin did not  
10:27AM 22 anticipate the shooting?

10:27AM 23 A. I don't know that I argued that he didn't  
10:27AM 24 anticipate the shooting. I mean I -- in terms of  
10:27AM 25 argument, presentation of the evidence -- I'm not sure I

10:27AM 1 understand the question.

10:27AM 2 Q. Okay. You understand that in assessing the  
10:27AM 3 death penalty there has to be an individualized  
10:27AM 4 assessment of culpability in the offense, moral  
10:27AM 5 responsibility for the killing?

10:27AM 6 A. Correct.

10:27AM 7 Q. And that just because you're a party to the  
10:27AM 8 offense doesn't mean that everybody involved gets the  
10:28AM 9 death penalty?

10:28AM 10 A. Correct.

10:28AM 11 Q. And part of those -- do you understand part of  
10:28AM 12 that decision that the jury has to make regards the  
10:28AM 13 extent to which the person on trial anticipated that a  
10:28AM 14 killing would occur?

10:28AM 15 A. Okay.

10:28AM 16 Q. Do you agree with that?

10:28AM 17 A. Anticipated or could have anticipated.

10:28AM 18 Q. What's your understanding? Just that they  
10:28AM 19 could have anticipated?

10:28AM 20 A. Could have anticipated.

10:28AM 21 Q. Your understanding is if the State shows that  
10:28AM 22 he could have anticipated, that would be sufficient  
10:28AM 23 under Tyson and Edmonds to warrant a death penalty?

10:28AM 24 A. Okay. I may be confusing as to whether  
10:29AM 25 anticipated or could have anticipated warrants the death

10:29AM 1 penalty or warrants him being a party to capital murder.

10:29AM 2 Q. Okay. Obviously, there's two phases to the  
10:29AM 3 death penalty trial. The first phase there's an issue  
10:29AM 4 about anticipation, correct? And then the second phase  
10:29AM 5 there's a second set of issues regarding anticipation.

10:29AM 6 A. Okay.

10:29AM 7 Q. They're not the same. Is that your  
10:29AM 8 understanding?

10:29AM 9 A. I'm seeing that now. I think I had that  
10:29AM 10 confused in my mind.

10:29AM 11 Q. You're attempting to show -- were you  
10:29AM 12 attempting to show that he didn't have the necessary  
10:29AM 13 degree of anticipation that would justify imposition of  
10:29AM 14 the death penalty?

10:29AM 15 A. Okay.

10:29AM 16 Q. Was that part of the strategy?

10:29AM 17 A. I believe it was, just through everything that  
10:30AM 18 went on in the trial, the cross-examination of the  
10:30AM 19 witnesses, the argument, so forth.

10:30AM 20 Q. Are you familiar with something called an  
10:30AM 21 anti-parties charge?

10:30AM 22 A. Not as I sit here.

10:30AM 23 Q. Are you familiar with any charges that have  
10:30AM 24 been given, any cases relating to instructing the jury  
10:30AM 25 in a death penalty case to the effect that they can't

10:30AM 1 simply impose the death penalty because he's a party?

10:30AM 2           You can be guilty as a party but that  
10:30AM 3 doesn't necessarily mean you get the death penalty  
10:30AM 4 imposed as a party. Are you familiar with any cases at  
10:30AM 5 all regarding that?

10:30AM 6           A. I'm not.

10:30AM 7           Q. Okay. Who was responsible for reviewing and  
10:30AM 8 objecting to the charge?

10:30AM 9           A. Mr. King and I kind of did that together.

10:31AM 10          Q. Now, a lot of times the current practice, I  
10:31AM 11 think, is to have a third appellate attorney appointed;  
10:31AM 12 is that right?

10:31AM 13          A. Correct.

10:31AM 14          Q. Do you remember if you had a third appellate  
10:31AM 15 attorney appointed to assist you at that trial?

10:31AM 16          A. No. That wasn't the practice at that time.

10:31AM 17          Q. Was there a strategic reason not to request an  
10:31AM 18 anti-parties charge?

10:31AM 19          A. No.

10:31AM 20                 MR. ANTON: Is it appropriate to take a  
10:31AM 21 break right now?

10:32AM 22                 THE COURT: Let's take a ten-minute break.  
10:43AM 23                 (A brief recess was taken.)

10:43AM 24                 THE COURT: Go ahead.

10:44AM 25          Q. (By Mr. Anton) Mr. Ashford --

10:44AM 1 A. Yes, sir.

10:44AM 2 Q. -- I think that maybe before the break there  
10:44AM 3 was some confusion. I want to make sure I understand.  
10:44AM 4 Do you understand that at the guilt-innocence phase the  
10:44AM 5 jury must find that the defendant should have  
10:44AM 6 anticipated a death, correct?

10:44AM 7 A. Yes. I'm sorry.

10:44AM 8 Q. And then the wording of the charge in the  
10:44AM 9 second phase is "did anticipate"?

10:44AM 10 A. Correct.

10:44AM 11 Q. You understood those distinctions at the time  
10:44AM 12 of trial?

10:44AM 13 A. Yes.

10:44AM 14 Q. Concerning the did anticipate, what evidence or  
10:44AM 15 what was your strategy showing that that answer should  
10:44AM 16 be he did not anticipate?

10:44AM 17 A. I don't remember that we had a specific  
10:44AM 18 strategy. I think it's just the way that we attacked  
10:44AM 19 the case through cross-examination and through Randy's  
10:45AM 20 testimony, everything we tried to do in terms of just  
10:45AM 21 trying the case.

10:45AM 22 I mean I don't think we could have shown  
10:45AM 23 that he did not anticipate other than through his  
10:45AM 24 testimony, just like it was almost impossible to figure  
10:45AM 25 out who fired what shots which is what the jury told us



10:45AM 1 they tried to do after we talked to them after the  
10:45AM 2 verdict.

10:45AM 3 Q. Whose job was it to object to improper  
10:45AM 4 arguments made at the punishment phase? A lot of times  
10:46AM 5 in court there is multiple attorneys and one makes an  
10:46AM 6 objection. They both don't stand up and make  
10:46AM 7 objections.

10:46AM 8 A. Yes. Judge Cunningham was very clear on that,  
10:46AM 9 that he wasn't going to have both attorneys objecting.  
10:46AM 10 You're talking about argument?

10:46AM 11 Q. Particularly punishment argument.

10:46AM 12 A. Probably been me.

10:46AM 13 Q. And so had the State argued that the evidence  
10:46AM 14 showed that he should have anticipated, would it have  
10:46AM 15 been your obligation to make an objection that they  
10:46AM 16 hadn't shown did anticipate or they weren't stating the  
10:46AM 17 law correctly?

10:46AM 18 A. Yes.

10:47AM 19 Q. Was there any strategic reason for not  
10:47AM 20 objecting at punishment argument?

10:47AM 21 A. No.

10:47AM 22 Q. There are several other issues I would like to  
10:47AM 23 run through briefly with you. Some of the discussion --  
10:47AM 24 you know that at various times various of the  
10:47AM 25 co-defendants had made written statements and had

10:47AM 1 testified regarding their role in the offense?

10:47AM 2 A. Yes.

10:47AM 3 Q. And they had testified to some extent regarding  
10:47AM 4 Mr. Halprin's role in the offense; is that right?

10:47AM 5 A. Yes.

10:47AM 6 Q. You were aware that, for example, Donald  
10:47AM 7 Newbury testified that I think after examining the  
10:47AM 8 records that he determined that Halprin did not shoot.

10:47AM 9 A. I don't remember that specifically but I'm sure  
10:47AM 10 I read it at the time.

10:47AM 11 Q. There are several like that. Let me ask you  
10:48AM 12 about the co-defendants. Was there ever any discussion  
10:48AM 13 that you had with Mr. King about calling or not calling  
10:48AM 14 or attempting to call the co-defendants as witnesses in  
10:48AM 15 Mr. Halprin's trial?

10:48AM 16 A. Yes.

10:48AM 17 Q. What were those discussions?

10:48AM 18 A. Just whether we should call them or not, the  
10:48AM 19 pluses or minuses, whether they would be believable,  
10:48AM 20 whether they would hurt us because these seven or six  
10:48AM 21 guys were like the most hated men in America at the time  
10:48AM 22 and we just decided not to.

10:48AM 23 Q. Okay. Because they would not have made good  
10:48AM 24 witnesses or they could have damaged your credibility?

10:48AM 25 A. You know, when you are trying cases it's more

10:49AM 1 just about presentation to the jury, what -- when the  
10:49AM 2 jury looks at them, what do they feel? Does it anger  
10:49AM 3 them? It's not strategically so much what you are going  
10:49AM 4 to get out of it or not except for the impression they  
10:49AM 5 leave with the jury and whether that's good for you or  
10:49AM 6 bad for you.

10:49AM 7 We didn't think that despite the fact that  
10:49AM 8 they were going to say that he fired or didn't fire,  
10:49AM 9 that they just weren't going to leave a good impression.  
10:49AM 10 It wasn't going to help us.

10:49AM 11 Q. Okay. Aside from calling the witnesses  
10:49AM 12 individually, under some circumstances it's also  
10:49AM 13 permissible to introduce statements against penal  
10:49AM 14 interests. You understand that?

10:49AM 15 A. Yes.

10:49AM 16 Q. These people, Newbury, Rodriguez, Murphy had  
10:49AM 17 all given statements against their penal interests. Did  
10:49AM 18 you understand that?

10:49AM 19 A. Yes.

10:50AM 20 Q. And, for example, in Rodriguez and Murphy's  
10:50AM 21 statements I think I said Newbury before. In Rodriguez  
10:50AM 22 and Murphy's statements I believe that part of their  
10:50AM 23 statement was that Halprin did not fire the gun. Do you  
10:50AM 24 recall that?

10:50AM 25 A. Not specifically but I'm sure we reviewed it at

10:50AM 1 the time.

10:50AM 2 Q. And was there a reason not to try to introduce  
10:50AM 3 their written statements as statements against penal  
10:50AM 4 interests?

10:50AM 5 A. I know we discussed it. There might have been  
10:50AM 6 some inconsistency in what they were saying even though  
10:50AM 7 they were consistent in saying that he didn't fire his  
10:50AM 8 weapon. It might have been what we thought Toby Shook  
10:50AM 9 would do with it with all the inconsistencies in their  
10:51AM 10 statements. We discussed it. We decided not to do it.

10:51AM 11 Q. Would you agree that there was -- a large part  
10:51AM 12 of the State's presentation was taking parts of the  
10:51AM 13 statements of the other escapees where they initially  
10:51AM 14 say, "We thought Randy fired his guns," and introducing  
10:51AM 15 that as evidence that Randy had fired and then the  
10:51AM 16 defense attempting to impeach those recollections of the  
10:51AM 17 law enforcement officers?

10:51AM 18 A. I actually don't really even recall that.

10:51AM 19 Q. Okay. In your mind again -- I think you stated  
10:51AM 20 this before but if I understand what you're saying, your  
10:51AM 21 primary defense strategy wasn't dependent on whether or  
10:51AM 22 not Halprin had actually fired -- his gun had actually  
10:52AM 23 discharged; is that right?

10:52AM 24 A. Did I say that? I mean I said --

10:52AM 25 THE COURT: I think what the witness said

10:52AM 1 was one scenario, he shot himself in the foot. Other  
10:52AM 2 scenario was he didn't shoot at all and that the overall  
10:52AM 3 strategy, he was trying to minimize Mr. Halprin's  
10:52AM 4 participation in the offense.

10:52AM 5 Is that pretty accurate?

10:52AM 6 THE WITNESS: Correct. If he did fire,  
10:52AM 7 didn't fire at the officer.

10:52AM 8 Q. (By Mr. Anton) So would it have been helpful to  
10:52AM 9 the defense if the statements of Rodriguez and Murphy  
10:52AM 10 that Halprin did not fire the weapon -- would that have  
10:52AM 11 been consistent with the defense as being presented?

10:53AM 12 A. Yeah. Taken in a vacuum, it would have been.

10:53AM 13 Q. In the context of the others, their statements  
10:53AM 14 would sufficiently prejudice that you decided not to  
10:53AM 15 introduce them?

10:53AM 16 A. I didn't remember why we did but we discussed  
10:53AM 17 it and we decided not to.

10:53AM 18 Q. Do you recall that the -- I believe the wife of  
10:53AM 19 the officer, the family of Mr. Hawkins testified and  
10:53AM 20 there was a lot of victim impact testimony in the  
10:53AM 21 guilt-innocence phase of trial about the effects that  
10:53AM 22 the death had?

10:53AM 23 THE COURT: Are you referring to the first  
10:53AM 24 witness, the mother?

10:53AM 25 THE WITNESS: Jane Hawkins, I believe.

10:53AM 1 THE COURT: Is that the mother or the wife?

10:53AM 2 MS. SMITH: The mother.

10:54AM 3 A. In the guilt-innocence phase?

10:54AM 4 Q. (By Mr. Anton) Yeah.

10:54AM 5 A. I recall her testifying -- I do believe she  
10:54AM 6 testified as some of the impact on the family. Yeah, I  
10:54AM 7 guess you could call that victim impact testimony.

10:54AM 8 Q. Was there a strategic decision made not to  
10:54AM 9 object to that testimony at the guilt-innocence phase?

10:54AM 10 A. I don't know if it was my witness or Mr. King's  
10:54AM 11 witness but I certainly don't object under those  
10:55AM 12 circumstances as a strategy. I mean I have objected. I  
10:55AM 13 had a case two weeks ago where I cut a witness off and I  
10:55AM 14 thought she was going a little bit too far. In this  
10:55AM 15 case definitely as a strategy I wasn't going to cut her  
10:55AM 16 off.

10:55AM 17 Q. What's the basis for that strategic decision?

10:55AM 18 A. Well, you know, you have to look at the way  
10:55AM 19 things look to the jury and there wasn't a whole lot  
10:55AM 20 of -- there wasn't a whole lot of controversy about, you  
10:55AM 21 know, what happened in this case.

10:55AM 22 Everybody knew who she was. Everybody knew  
10:55AM 23 her feelings. And, you know, we could have cut her off  
10:55AM 24 but the impression in front of the jury I don't think  
10:56AM 25 would have been very good. I think it's just best to go

10:56AM 1 ahead and let her say her peace. That's my opinion in  
10:56AM 2 trying cases for several years.

10:56AM 3 Q. When Mr. Halprin took the stand he was  
10:56AM 4 impeached with a lot of letters that he had written from  
10:56AM 5 the jail, statements that he had made, drawings that he  
10:56AM 6 had done. Do you recall that?

10:56AM 7 A. Yes.

10:56AM 8 Q. Now, if I understand the division of labor,  
10:56AM 9 that was Mr. King's witness?

10:56AM 10 A. Correct.

10:56AM 11 Q. So the obligation to object to any kind of  
10:56AM 12 improper impeachment would have been Mr. King's?

10:56AM 13 A. Correct.

10:56AM 14 Q. Was there any discussion in advance of Mr.  
10:56AM 15 Halprin testifying about how to handle that or did you  
10:56AM 16 anticipate that those, the letters and so on, would be  
10:57AM 17 used for impeachment?

10:57AM 18 A. To tell you the truth, I don't remember but I  
10:57AM 19 don't think we did anticipate that. We had hundreds of  
10:57AM 20 pages of documents and we didn't have the time that Toby  
10:57AM 21 Shook would have, you know, trying one case as opposed  
10:57AM 22 to our however many to, you know, anticipate that he's  
10:57AM 23 going to go through the one letter that Randy writes  
10:57AM 24 that says he's a liar, you know.

10:57AM 25 One of the first things I did was send

10:57AM 1 Randy a letter when I first got appointed when he was  
10:57AM 2 still in Colorado advising him not to talk to  
10:57AM 3 individuals, not to give news conferences. When Mr.  
10:57AM 4 King visited Randy in Colorado he advised him the same.  
10:57AM 5 We were telling him the same the whole  
10:58AM 6 time. And when we got our discovery we had hundreds of  
10:58AM 7 pages of letters he wrote to people all over everywhere.  
10:58AM 8 It just blew us away.

10:58AM 9 Q. It's common knowledge, isn't it, that everybody  
10:58AM 10 knows that they copied the letters and they listened to  
10:58AM 11 the phone calls and if you say the wrong thing, it's  
10:58AM 12 going to come up?

10:58AM 13 A. Exactly.

10:58AM 14 Q. Diligent attorneys advise their clients, "Don't  
10:58AM 15 do those kind of things. It's going to come back to  
10:58AM 16 you"?

10:58AM 17 A. Correct.

10:58AM 18 Q. It always does?

10:58AM 19 A. Correct.

10:58AM 20 Q. You tell them to be on watch for that?

10:58AM 21 A. Correct.

10:58AM 22 Q. During Mr. Halprin's testimony -- I don't know  
10:58AM 23 if there was a break or lunch break. Did you ever have  
10:58AM 24 a conversation with Mr. King about, "All of this still  
10:58AM 25 is coming in? We need to object to it while -- on the



10:58AM 1 fly when the trial is going on"?

10:58AM 2 A. I want to say that I did. But to be honest, I  
10:58AM 3 really can't say that I did. I don't remember.

10:58AM 4 Q. Do you remember what the strategy would have  
10:58AM 5 been or what the objections could have been to try and  
10:59AM 6 limit that damage?

10:59AM 7 A. Well, I mean impeaching him by non-legal  
10:59AM 8 impeachment, not inconsistent prior statements, not  
10:59AM 9 prior convictions.

10:59AM 10 Q. Regard to the victim impact, I mean you made a  
10:59AM 11 decision based on the context of the trial that based on  
10:59AM 12 your trial strategy it was important to object to that  
10:59AM 13 at that time, right?

10:59AM 14 A. Correct.

10:59AM 15 Q. Was any kind of discussion or decision made  
10:59AM 16 regarding the improper impeachment that "Given the  
10:59AM 17 context of trial, maybe we should just let this go"?

10:59AM 18 A. I can't tell you that I remember that  
10:59AM 19 conversation. I can tell you that if I had been the  
10:59AM 20 lawyer, it probably might have been 50-50. I could see  
10:59AM 21 reasons why to just let it go. I can see reasons why to  
10:59AM 22 object to it. I don't remember any specific  
10:59AM 23 conversation I had with Mr. King.

11:00AM 24 Q. Would it be fair to say based on your  
11:00AM 25 recollection and -- I know you haven't reviewed the

11:00AM 1 transcript recently. Would it be fair to say that the  
11:00AM 2 bulk of the cross-examination of Mr. Halprin related to  
11:00AM 3 all of these letters and drawings and this other  
11:00AM 4 impeachment material?

11:00AM 5 A. It was pretty damaging, along with the way that  
11:00AM 6 Randy reacted to it and kind of failed to defend  
11:00AM 7 himself.

11:00AM 8 Q. In that context would there have been a good  
11:00AM 9 reason for not objecting?

11:00AM 10 A. Well, strategy-wise, yeah, I could think of a  
11:00AM 11 couple of reasons.

11:00AM 12 Q. Why? Just for example.

11:00AM 13 A. Once again, you have to look at how everything  
11:00AM 14 looks to a jury and, you know, when you put a guy up  
11:00AM 15 there, you know, you can't totally defend him. To a  
11:00AM 16 certain extent he's got to defend himself.

11:00AM 17 If you try to object, you know -- if you  
11:01AM 18 put a guy up there and he's going on and on on direct  
11:01AM 19 and at cross you try to object to everything the State  
11:01AM 20 says and does it look like you're protecting him, it  
11:01AM 21 doesn't help you. To a certain extent guy has got to  
11:01AM 22 get up there and defend himself.

11:01AM 23 Sometimes as a strategy, even though it may  
11:01AM 24 be hurting you, you think it's going to be worse if you  
11:01AM 25 get up there and try to cut it off and try to help. I

11:01AM 1 don't know what Mr. King was thinking. I don't remember  
11:01AM 2 the conversations that we had but ...

11:01AM 3 Q. In order to limit that prior to trial the  
11:01AM 4 defense did request 404(b) material and a 404(b)  
11:01AM 5 request. An answer was given by the State. Do you  
11:01AM 6 recall that?

11:01AM 7 A. Not really.

11:01AM 8 Q. Do you know if any of these -- all these  
11:02AM 9 letters and previous misstatements were listed in the  
11:02AM 10 404(b) notice?

11:02AM 11 A. No, I don't remember.

11:02AM 12 Q. If they weren't, could there have been an  
11:02AM 13 objection outside the jury's presence that "Hey, we  
11:02AM 14 weren't given notice of this under 404(b)"?

11:02AM 15 A. Sure could have made that objection. I mean we  
11:02AM 16 had it. It was part of our discovery but we could have  
11:02AM 17 made that objection.

11:02AM 18 Q. Do you know if there's a strategic reason not  
11:02AM 19 to have made that objection?

11:02AM 20 A. I don't know.

11:02AM 21 Q. When the 404(b) -- when that impeachment comes  
11:02AM 22 in, if these bad acts are offered for impeachment  
11:03AM 23 purposes and not just general attacks on character, you  
11:03AM 24 can get a limiting instruction, can't you?

11:03AM 25 A. Yes.

11:03AM 1 Q. Was there ever a discussion about making a  
11:03AM 2 limiting instruction?

11:03AM 3 A. I don't recall. From what I remember -- I  
11:03AM 4 don't know if the letters would have even qualified as  
11:03AM 5 bad acts. They certainly weren't offenses. They were  
11:03AM 6 just stupid stuff that made him look bad. I don't know  
11:03AM 7 if it reached the level of requesting a limiting  
11:03AM 8 instruction for it. I guess we could have.

11:03AM 9 Q. Well, I mean do you think a cross-examination  
11:03AM 10 of the State -- under what theory can the State read  
11:03AM 11 your jail letters?

11:04AM 12 A. I don't know if there's any specific theory for  
11:04AM 13 them to read your jail letters unless they're for  
11:04AM 14 impeachment or they're relevant to some matter.

11:04AM 15 Q. Right. If he had opened the door to the  
11:04AM 16 content of some of those letters the portions could have  
11:04AM 17 been introduced for impeachment?

11:04AM 18 A. Correct.

11:04AM 19 Q. And if -- aside from that, you're not allowed  
11:04AM 20 to prove character through specific misacts, misconduct,  
11:04AM 21 right?

11:04AM 22 A. Correct.

11:04AM 23 Q. In your mind looking back on it, if you can  
11:04AM 24 recall, were these materials objectionable?

11:04AM 25 A. Yes, I thought they were objectionable at the

11:04AM 1 time.

11:04AM 2 Q. Do you think that the voluminous  
11:05AM 3 cross-examination of Mr. Halprin regarding all of these  
11:05AM 4 letters and drawings damaged his credibility?

11:05AM 5 A. Yes.

11:05AM 6 Q. Do you think it was prejudicial to the defense?

11:05AM 7 A. Yes.

11:05AM 8 MR. ANTON: Your Honor, I'm finished with  
11:05AM 9 that issue. Mr. Udashen has prepared the presentation  
11:05AM 10 on the ranking document.

11:05AM 11 MR. UDASHEN: Your Honor, I'll be asking  
11:05AM 12 the questions about that. I'm ready to move forward on  
11:05AM 13 that.

11:05AM 14 Q. (By Mr. Udashen) Mr. Ashford, you know what  
11:05AM 15 we're talking about when we say the "ranking document"?

11:05AM 16 A. Absolutely.

11:05AM 17 THE COURT: You can be seated.

11:05AM 18 MR. UDASHEN: Thank you, Your Honor.

11:05AM 19 Q. (By Mr. Udashen) Just so we're all clear, the  
11:05AM 20 ranking document that was offered in evidence but not  
11:05AM 21 accepted but it was Defendant's Exhibit Number 39,  
11:06AM 22 right?

11:06AM 23 A. Correct.

11:06AM 24 Q. What's the first time you ever saw that  
11:06AM 25 document?

11:06AM 1 A. When I got the boxes of discovery, numbered  
11:06AM 2 discovery, that the State presented us which I can't  
11:06AM 3 tell you when that was but early on in the case. As I  
11:06AM 4 went through it, that was one of the documents that was  
11:06AM 5 contained in that discovery from the State.

11:06AM 6 THE COURT: Excuse me, Mr. Udashen. Ask a  
11:06AM 7 question before I forget.

11:06AM 8 Do you recall in your review of the  
11:06AM 9 transcripts of the previous trials whether that ranking  
11:06AM 10 document was ever discussed?

11:06AM 11 THE WITNESS: Do I recall it in my review?  
11:06AM 12 No.

11:06AM 13 THE COURT: Go ahead, Mr. Udashen.

11:06AM 14 Q. (By Mr. Udashen) Mr. Ashford, the ranking  
11:07AM 15 document that you offered into evidence has a Bates  
11:07AM 16 stamp number on it of 1550. Did you put that Bates  
11:07AM 17 stamp on it or was it on there when you got it from the  
11:07AM 18 State?

11:07AM 19 A. All of the stamps on the documents were there  
11:07AM 20 when we got them from the State. Those are their  
11:07AM 21 stampings.

11:07AM 22 Q. Have you heard or has anybody ever said to you  
11:07AM 23 yourself a claim by any of the prosecutors that they did  
11:07AM 24 not give you this document, that in fact you and Mr.  
11:07AM 25 King had produced it to them?

11:07AM 1 A. No, I don't recall that at all.

11:07AM 2 Q. You've never heard that they have made that  
11:07AM 3 claim?

11:07AM 4 A. No.

11:07AM 5 Q. Is that claim -- is there validity to that  
11:07AM 6 claim at all?

11:07AM 7 A. No.

11:07AM 8 Q. Now, you got a box of discovery or several  
11:07AM 9 boxes of discovery that had that document in it,  
11:07AM 10 correct?

11:07AM 11 A. Correct.

11:07AM 12 Q. From your review of that document were you able  
11:07AM 13 to tell where that document came from and who wrote it?

11:08AM 14 A. No. And that was a big issue of contention in  
11:08AM 15 the trial.

11:08AM 16 Q. How far in advance approximately of the trial  
11:08AM 17 do you think it was when you received that document?

11:08AM 18 A. I really can't tell you, Mr. Udashen.

11:08AM 19 Q. What efforts did you and the defense team make  
11:08AM 20 to try to determine who wrote that document?

11:08AM 21 A. Once we figured out that that was going to be  
11:08AM 22 an issue of contention, which actually I really -- I  
11:08AM 23 think it was during the course of the trial -- we hired  
11:08AM 24 S. O. Woods, former custodian of records from TDC, to go  
11:08AM 25 down to Huntsville and go through all the records that

11:09AM 1 he could find that were related to this case and try to  
11:09AM 2 figure it out for us.

11:09AM 3 THE COURT: Excuse me. Was that during the  
11:09AM 4 pendency of the trial?

11:09AM 5 THE WITNESS: I believe that it was.

11:09AM 6 Q. (By Mr. Udashen) You mean while the trial was  
11:09AM 7 going on in the courtroom?

11:09AM 8 A. Correct.

11:09AM 9 THE COURT: Just a minute. Another  
11:09AM 10 question.

11:09AM 11 To your recollection was that ranking  
11:09AM 12 document something that you or Mr. King provided to Ms.  
11:09AM 13 Goodness during preparation of the trial?

11:09AM 14 THE WITNESS: I'm almost certain that Dr.  
11:09AM 15 Goodness had every single document that we had.

11:09AM 16 THE COURT: Is that a yes?

11:09AM 17 THE WITNESS: That's a yes.

11:09AM 18 THE COURT: Go ahead, Mr. Udashen.

11:09AM 19 MR. UDASHEN: Thank you, Your Honor.

11:09AM 20 Q. (By Mr. Udashen) So you had the document prior  
11:10AM 21 to trial?

11:10AM 22 A. Correct.

11:10AM 23 Q. Had you -- did you and Mr. King make a decision  
11:10AM 24 that you were going to offer that document into  
11:10AM 25 evidence?



11:10AM 1 A. Yes.

11:10AM 2 Q. And when you intended to offer it into evidence  
11:10AM 3 what was your plan on how to get it in evidence? What  
11:10AM 4 would be the witness and the strategy to actually get  
11:10AM 5 the document into evidence?

11:10AM 6 A. We assumed that that document was a Texas  
11:10AM 7 Department of Corrections document and we assumed that  
11:10AM 8 because we had several other documents where TDC  
11:10AM 9 employees, either guards or civilian employees, were  
11:10AM 10 asked to basically do the same thing, rank these  
11:10AM 11 individuals to say whether they thought they were smart,  
11:10AM 12 dumb, violent, non-violent, so forth and so on.

11:11AM 13 And we actually called those witnesses at  
11:11AM 14 trial and we offered their sponsoring documents to  
11:11AM 15 support that. And we assumed that basically all those  
11:11AM 16 were together, the ranking document and the individual  
11:11AM 17 documents from these individuals, were all TDC documents  
11:11AM 18 because they were the same subject matter. And it just  
11:11AM 19 basically -- the ranking documents seem to be a  
11:11AM 20 compilation of what these individuals had done on an  
11:11AM 21 individual basis.

11:11AM 22 So we didn't anticipate that the State was  
11:11AM 23 going to all of a sudden pretend they didn't know where  
11:11AM 24 this document came from. We assumed either from one of  
11:11AM 25 the individual witnesses or some TDC official that was

11:12AM 1 called during the course of the trial we were going to  
11:12AM 2 be able to get that document in.

11:12AM 3 Q. You assumed that you would have some witness  
11:12AM 4 who would admit to familiarity with this document?

11:12AM 5 A. Correct.

11:12AM 6 Q. What efforts did you make prior to trial to  
11:12AM 7 determine who the author of this document was?

11:12AM 8 A. I don't recall if we made any efforts prior to  
11:12AM 9 trial to find out who the document of the author (sic)  
11:12AM 10 was because we didn't anticipate that they were going to  
11:12AM 11 object to it like they did. We might have but I don't  
11:12AM 12 recall.

11:12AM 13 Q. Did you know who the author of the document  
11:12AM 14 was?

11:12AM 15 A. No.

11:12AM 16 Q. Did you have any personal discussions with any  
11:12AM 17 of the prosecutors about this document prior to or  
11:12AM 18 during the trial?

11:12AM 19 A. During the trial. Prior to trial I can't say.

11:12AM 20 Q. During the trial did you talk to any of the  
11:12AM 21 prosecutors and ask them who the author of this document  
11:12AM 22 was?

11:13AM 23 A. Yes.

11:13AM 24 Q. Who did you talk to?

11:13AM 25 A. I can't say specifically but it would had to

11:13AM 1 have been Toby Shook, Tom D'Amore, if not both.

11:13AM 2 Q. What did they tell you?

11:13AM 3 A. They kept saying they didn't know where the  
11:13AM 4 document came from.

11:13AM 5 Q. Did they say they had never seen it before?

11:13AM 6 A. I can't be that specific.

11:13AM 7 Q. They said they didn't know where it came from?

11:13AM 8 A. Correct.

11:13AM 9 Q. Did you ask them to find out where it came  
11:13AM 10 from?

11:13AM 11 A. I'm sure I did.

11:13AM 12 Q. What was their response?

11:13AM 13 A. Just denying that they knew where it came from.

11:13AM 14 Q. Did you point out to them that you had gotten  
11:13AM 15 it from them?

11:13AM 16 A. Absolutely. I think I pointed that out to  
11:13AM 17 them. I pointed it out during objections, during the  
11:13AM 18 course of the trial. The big telling factor is that it  
11:13AM 19 has the big stamp on it that all the rest of our  
11:14AM 20 discovery has on it as to a numbered document.

11:14AM 21 Q. And is it fair to say that they refused to find  
11:14AM 22 out where the document came from?

11:14AM 23 A. Yes.

11:14AM 24 Q. Is it fair to say that it was easily within  
11:14AM 25 their ability to find out and tell you who wrote the

11:14AM 1 document?

11:14AM 2 A. I believe.

11:14AM 3 MS. SMITH: Objection, Your Honor. It's  
11:14AM 4 not within his knowledge about what --

11:14AM 5 THE COURT: Sustained.

11:14AM 6 Q. (By Mr. Udashen) Was this the fourth or fifth  
11:14AM 7 trial of the Texas Seven? What number was this?

11:14AM 8 A. I don't recall but I believe it was at least --

11:14AM 9 THE COURT: Can the parties stipulate this  
11:14AM 10 was the fifth trial?

11:14AM 11 MS. SMITH: State will stipulate.

11:14AM 12 Q. (By Mr. Udashen) From your investigation and  
11:14AM 13 preparation for this trial was there one or more of the  
11:14AM 14 prosecutors who had been involved in all of the previous  
11:14AM 15 trials?

11:15AM 16 A. I know Toby Shook had been involved in at least  
11:15AM 17 all of them, I thought. I don't remember who else was  
11:15AM 18 involved but I think most of the same prosecutors were  
11:15AM 19 involved in all of them.

11:15AM 20 Q. You made a reference earlier to Mr. Shook  
11:15AM 21 basically working on this one case for a period of time.  
11:15AM 22 Was that your understanding?

11:15AM 23 A. Well, I mean I know that's the way super chiefs  
11:15AM 24 operate. They take a capital or two and they work those  
11:15AM 25 cases.

11:15AM 1 Q. Based upon your knowledge of Mr. Shook's  
11:15AM 2 involvement in the Texas Seven cases did it surprise you  
11:15AM 3 that there was a document that he had no knowledge of  
11:15AM 4 that was related to this case?

11:15AM 5 A. Absolutely.

11:15AM 6 Q. Tell us -- tell us how -- what you thought  
11:15AM 7 about that when he told you that.

11:15AM 8 THE COURT: Mr. Udashen, let me interrupt  
11:15AM 9 you. I don't know that what Mr. Ashford thought is  
11:16AM 10 particularly helpful to me regarding Mr. Shook's  
11:16AM 11 ignorance of the document.

11:16AM 12 Let me ask you, Mr. Ashford, did you and  
11:16AM 13 Mr. King discuss whether or not to request a continuance  
11:16AM 14 to try and ascertain the authorship of that document?

11:16AM 15 THE WITNESS: Specifically I don't recall,  
11:16AM 16 Judge.

11:16AM 17 THE COURT: Did you ask for a continuance?

11:16AM 18 THE WITNESS: I don't recall.

11:16AM 19 MR. UDASHEN: May I approach the witness?

11:16AM 20 THE COURT: You may.

11:17AM 21 (Off-the-record discussion)

11:17AM 22 MR. UDASHEN: Can I proceed, Your Honor?

11:17AM 23 THE COURT: You may.

11:17AM 24 Q. (By Mr. Udashen) Mr. Ashford, let me show you  
11:17AM 25 some documents that are filed in the Court's records on

11:17AM 1 this case. It's filed as part of the record excerpts  
11:17AM 2 that we filed on behalf of Mr. Halprin.

11:17AM 3 A. Okay.

11:17AM 4 Q. Under tab B -- and just so we're clear on what  
11:17AM 5 we're talking about, it's a letter and documents from  
11:17AM 6 the Texas Department of Criminal Justice. Okay?

11:17AM 7 A. Okay.

11:17AM 8 Q. Contained within here if you would just look --  
11:17AM 9 first of all, let me show this to the prosecutor and  
11:17AM 10 I'll bring it back to you.

11:17AM 11 I'm going to show you a fax from the Irving  
11:18AM 12 Police Department that makes reference to profiles done  
11:18AM 13 by Sgt. Hank Whitman. Do you see that?

11:18AM 14 A. Uh-huh.

11:18AM 15 Q. Have you ever heard of Sgt -- Investigator Hank  
11:18AM 16 Whitman prior to or during this trial?

11:18AM 17 A. I can't say that I did or I didn't. I don't  
11:18AM 18 remember.

11:18AM 19 Q. This fax cover sheet I'm showing you here, did  
11:18AM 20 you ever see this in relation to the ranking document?

11:18AM 21 A. In looking at the fact that it doesn't have  
11:18AM 22 that stamp number on the bottom right-hand corner, I'd  
11:18AM 23 have to say no.

11:18AM 24 Q. So if this document makes reference to Sgt.  
11:18AM 25 Whitman, you saw nothing that connected Sgt. Whitman to

11:18AM 1 the ranking document?

11:18AM 2 A. Correct.

11:19AM 3 Q. Now, what else could you and Mr. King have done  
11:19AM 4 that you didn't do in order to find out who the author  
11:19AM 5 of this document was?

11:19AM 6 A. I can't tell you. We had so many documents. I  
11:19AM 7 mean that's just such an open-ended question, going to  
11:19AM 8 find something and you don't know where it comes from.  
11:19AM 9 Our whole point was the statement, where it came from.  
11:19AM 10 They gave it to us. It was part of their discovery.  
11:19AM 11 They could have found it.

11:19AM 12 I mean we could have hired an investigator  
11:19AM 13 to go ask everybody in law enforcement, "Did you have  
11:19AM 14 anything to do with this document?" But I mean we were  
11:19AM 15 asking everybody that we came across. We asked every  
11:20AM 16 law enforcement officer that testified. We asked all  
11:20AM 17 the individual TDC employees and we couldn't get an  
11:20AM 18 answer.

11:20AM 19 Q. Was it -- did you have a strategic reason not  
11:20AM 20 to present the author of the document as a witness?

11:20AM 21 A. No.

11:20AM 22 Q. Had you known who the author of the document  
11:20AM 23 was would you have called him as a witness?

11:20AM 24 A. If we had known who the author of the document  
11:20AM 25 was we would have called him as a witness if we weren't

11:20AM 1 otherwise able to get the document admitted which we  
11:20AM 2 weren't so we would have.

11:20AM 3 Q. This document was something that your strategy  
11:20AM 4 was to get it admitted?

11:20AM 5 A. Absolutely.

11:20AM 6 Q. During the -- during the outside the presence  
11:20AM 7 of the jury discussion of the document with the Court  
11:21AM 8 Mr. D'Amore, one of the prosecutors, said, "We didn't  
11:21AM 9 know who made it either." Do you remember that?

11:21AM 10 A. Yes.

11:21AM 11 Q. Who all from the prosecution team was present  
11:21AM 12 in court at the time that statement was made?

11:21AM 13 A. I can't tell you. I would assume it was at  
11:21AM 14 least he and Mr. Shook.

11:21AM 15 Q. Now, you said that y'all had during the trial  
11:21AM 16 hired S. O. Woods.

11:21AM 17 A. I believe it was during the trial. Mr. King --  
11:21AM 18 Mr. King took care of handling S. O. Woods. The only  
11:21AM 19 reason I say it was during the trial is because I don't  
11:21AM 20 really recall it being an issue that we were going to be  
11:21AM 21 able to get it in until we started trying to get it in.  
11:21AM 22 I may be wrong but that's just my recollection.

11:21AM 23 Q. And is it your understanding that Mr. Woods was  
11:22AM 24 unable to tell you and Mr. King who the author of the  
11:22AM 25 document was?



11:22AM 1 A. Correct.

11:22AM 2 Q. Although he was able to verify that it was in  
11:22AM 3 the TDC records on this case?

11:22AM 4 A. I believe so.

11:22AM 5 Q. The document itself makes reference to  
11:22AM 6 interviews with civilian workers, correction officers  
11:22AM 7 and several inmates. Do you recall that?

11:22AM 8 A. Yes.

11:22AM 9 Q. Did you -- did you have any information as to  
11:22AM 10 who these people were that were interviewed in  
11:22AM 11 preparation of this document?

11:22AM 12 A. Not specifically. The actual TDC employees  
11:22AM 13 that were called that we had the corresponding documents  
11:22AM 14 to back up, of course, we assumed those were some of the  
11:22AM 15 people. Who else that might have been included other  
11:23AM 16 than those specific individuals we didn't know.

11:23AM 17 Q. What type of investigation did you do to  
11:23AM 18 determine who those individuals were that went into the  
11:23AM 19 preparation of this document?

11:23AM 20 A. Specifically I don't remember if we tried to  
11:23AM 21 find anybody other than those individuals or not.

11:23AM 22 Q. Whether you tried to find anybody other than  
11:23AM 23 the ones you already knew about?

11:23AM 24 A. Correct.

11:23AM 25 Q. Would you agree with me that the information in

11:23AM 1 this document concerning Mr. Halprin was mitigating  
11:23AM 2 evidence as to Mr. Halprin?

11:23AM 3 A. Absolutely.

11:23AM 4 Q. Very well may have affected the jury's decision  
11:23AM 5 on whether to give him the death penalty, that that was  
11:23AM 6 the purpose of it?

11:23AM 7 A. That was the purpose of it.

11:23AM 8 Q. And if there were witnesses who were  
11:23AM 9 interviewed that gave this information, would that  
11:23AM 10 indicate that there are potential exculpatory witnesses  
11:24AM 11 out there that have given information about Mr. Halprin?

11:24AM 12 A. Correct.

11:24AM 13 Q. In light -- in light of that do you feel like  
11:24AM 14 some effort should have been made to locate and  
11:24AM 15 determine who those people were?

11:24AM 16 A. I honestly can't say. I believe that we got  
11:24AM 17 the value out of the witnesses that we did have. I know  
11:24AM 18 it was somewhere in the area of four or five witnesses  
11:24AM 19 and whether any additional witnesses would have helped  
11:24AM 20 any more, I honestly can't say. I thought we got the  
11:24AM 21 value out of what we had.

11:24AM 22 MR. UDASHEN: Can I approach just a moment?

11:24AM 23 Q. (By Mr. Udashen) I'm going to show you a  
11:24AM 24 document that I filed this morning and it's entitled  
11:25AM 25 List of Persons Who Provided Information or Assisted in

11:25AM 1 Preparation of Ranking Document as Determined by Writ  
11:25AM 2 Counsel upon Open File Review of District Attorneys  
11:25AM 3 Files on Texas Seven.

11:25AM 4 I'm going to represent to you that this is  
11:25AM 5 a document I have prepared based upon our review of the  
11:25AM 6 files of people that it appears may have been  
11:25AM 7 interviewed in preparation of this document. Just ask  
11:25AM 8 you if you can just look at that and tell me were you  
11:25AM 9 aware of those people?

11:25AM 10 Other than the people that actually  
11:25AM 11 testified that are on that list, were you aware of these  
11:25AM 12 people and their potential involvement in this case or  
11:25AM 13 as potential witnesses concerning Mr. Halprin?

11:25AM 14 A. Absolutely not, Mr. Udashen. I see 67 people  
11:25AM 15 on this list. Even if you add in Wesley Halprin, a few  
11:25AM 16 other people that we might have talked to, I had no idea  
11:26AM 17 that there were this many people involved in that  
11:26AM 18 ranking document.

11:26AM 19 Q. Okay. Thank you. Let me ask you about a few  
11:26AM 20 particular inmates who have provided affidavits that  
11:26AM 21 have been filed in this case concerning Mr. Halprin and  
11:26AM 22 ask you if you ever spoke to these inmates or if you  
11:26AM 23 ever heard of them or if the State ever made you aware  
11:26AM 24 of them. Timothy Alan Black?

11:26AM 25 A. I can tell you right now. I never spoke to any

11:26AM 1 inmate. I don't know if the State made me aware of any  
11:26AM 2 inmate and I don't remember if there was anything that I  
11:26AM 3 could have gotten from the discovery that I had that  
11:27AM 4 would point me to any particular inmate.

11:27AM 5 Q. Let me read off the names and ask you a couple  
11:27AM 6 of questions.

11:27AM 7 THE COURT: Excuse me, Mr. Udashen.  
11:27AM 8 You received the ranking document; is that  
11:27AM 9 correct?

11:27AM 10 THE WITNESS: That's correct.

11:27AM 11 THE COURT: You were uncertain of the  
11:27AM 12 source?

11:27AM 13 THE WITNESS: Correct.

11:27AM 14 THE COURT: You inquired of the State and  
11:27AM 15 the State indicated that it was uncertain of the source;  
11:27AM 16 is that correct?

11:27AM 17 THE WITNESS: Correct.

11:27AM 18 THE COURT: You retained S. O. Woods,  
11:27AM 19 former director, I believe, of the Institutional  
11:27AM 20 Division to investigate and see if he could find out the  
11:27AM 21 source of the documents; is that correct?

11:27AM 22 THE WITNESS: Correct.

11:27AM 23 THE COURT: The information you received  
11:27AM 24 from him was that the document did exist in TDC records  
11:27AM 25 but he was unable to identify the source or author; is

11:27AM 1 that correct?

11:27AM 2 THE WITNESS: The last question I'm not as  
11:27AM 3 sure of in terms of specifics but that is my  
11:28AM 4 recollection.

11:28AM 5 THE COURT: On the face of the document  
11:28AM 6 itself does it identify any of the source material, any  
11:28AM 7 of the sources of the information?

11:28AM 8 THE WITNESS: It's been a while since I  
11:28AM 9 looked at it but I don't think so.

11:28AM 10 THE COURT: Would you like to look at it  
11:28AM 11 now?

11:28AM 12 THE WITNESS: Sure.

11:28AM 13 THE COURT: Take your time.

11:28AM 14 Let the record reflect the defense has  
11:28AM 15 tendered a copy of the ranking document to the witness  
11:28AM 16 or I should say the Applicant.

11:28AM 17 THE WITNESS: No, sir. Only sources of  
11:28AM 18 information would have been civilian workers,  
11:28AM 19 correctional officers, several inmates that worked  
11:28AM 20 closely with the escapees.

11:28AM 21 THE COURT: No one was named?

11:28AM 22 THE WITNESS: No.

11:29AM 23 THE COURT: Then it would be safe to say  
11:29AM 24 this document filed by the Applicant listing 67  
11:29AM 25 witnesses, you didn't contact any of them because you

11:29AM 1 didn't know who they were?

11:29AM 2 THE WITNESS: Those 67 witnesses also  
11:29AM 3 include, in looking at it briefly, the defendant's  
11:29AM 4 brother and there are a few law enforcement names on  
11:29AM 5 there that I am sure we probably talked to. But the  
11:29AM 6 vast majority of them we would have no way of knowing  
11:29AM 7 anything about them.

11:29AM 8 THE COURT: You didn't speak to any inmates  
11:29AM 9 that may have provided information that led to the  
11:29AM 10 creation of that ranking document; is that correct?

11:29AM 11 THE WITNESS: That's correct.

11:29AM 12 THE COURT: Mr. Udashen, let's move on.

11:29AM 13 MR. UDASHEN: Pass the witness, Your Honor.

11:29AM 14 MS. SMITH: How long do you want to go  
11:29AM 15 before we break for lunch?

11:29AM 16 THE COURT: Off the record.

11:29AM 17 (Off-the-record discussion)

11:29AM 18 CROSS-EXAMINATION

11:30AM 19 BY MS. SMITH:

11:30AM 20 Q. Good morning, Mr. Ashford.

11:30AM 21 A. Good morning.

11:30AM 22 Q. This isn't the first time you have answered  
11:30AM 23 questions about your performance in this trial. You  
11:30AM 24 answered some interrogatories.

11:30AM 25 A. Correct.

11:30AM 1 Q. You did that in September of '08. Does that  
11:30AM 2 sound right?

11:30AM 3 A. I didn't realize it was that long ago.

11:30AM 4 Q. We had to file a few copies of it because the  
11:30AM 5 first one we couldn't find a signed copy in the Court's  
11:30AM 6 file.

11:30AM 7 A. Correct.

11:30AM 8 Q. It's been a long time since this trial.

11:30AM 9 A. Yes.

11:30AM 10 Q. This trial started in 2001, correct?

11:30AM 11 A. Correct.

11:30AM 12 Q. I'm sorry. 2003. The offense was in 01.

11:30AM 13 A. I couldn't tell you.

11:30AM 14 Q. Really it's been a long time. This writ was  
11:30AM 15 filed in 2005. So we're looking at basically almost a  
11:30AM 16 decade here, right?

11:31AM 17 A. Correct.

11:31AM 18 Q. Would you say the passage of time has probably  
11:31AM 19 taken a toll on your memory of how you handled this  
11:31AM 20 case?

11:31AM 21 A. Absolutely.

11:31AM 22 Q. You mentioned a little bit about what you did  
11:31AM 23 or didn't review in preparing for your testimony today.  
11:31AM 24 Did you review anything before you answered the  
11:31AM 25 interrogatories that the defense submitted to you?

11:31AM 1 A. Not very much. I pretty much did it from  
11:31AM 2 memory.

11:31AM 3 Q. Have you seen the affidavit of Dr. Goodness  
11:31AM 4 that she gave writ counsel?

11:31AM 5 A. No.

11:31AM 6 Q. Or how about the affidavit of Hank Whitman?

11:31AM 7 A. No.

11:31AM 8 Q. What about the biological mother and brother of  
11:31AM 9 Mr. Halprin?

11:31AM 10 A. No.

11:31AM 11 Q. Safe to say you hadn't seen the D. A.  
11:31AM 12 affidavits in this case either, right?

11:31AM 13 A. No.

11:31AM 14 Q. Based on what you can recall, what do you think  
11:31AM 15 of your performance in this case? We're here today  
11:31AM 16 because writ counsel has accused you of 21 different  
11:32AM 17 acts of ineffective assistance. You tell me. How do  
11:32AM 18 you rate your performance?

11:32AM 19 A. I don't think I was deficit. I don't think we  
11:32AM 20 were deficit. There's always things you can do better  
11:32AM 21 in a trial. There's a lot of things in looking at  
11:32AM 22 hindsight you say -- not that you say but that writ  
11:32AM 23 attorneys say, "This would have worked, that would have  
11:32AM 24 worked."

11:32AM 25 And that's just -- that's impossible. I



11:32AM 1 mean my thought is there was a guy who was across the  
11:32AM 2 street with a radio who wasn't even a half a mile from  
11:32AM 3 where the shooting occurred, no question never fired a  
11:32AM 4 shot and he got the death penalty, too.

11:32AM 5 Q. You're talking about Patrick Murphy?

11:32AM 6 A. Correct.

11:32AM 7 Q. He was tried after Mr. Halprin?

11:33AM 8 A. Correct.

11:33AM 9 Q. I want to briefly discuss your qualifications  
11:33AM 10 just for the record. You've been licensed since 1985.

11:33AM 11 A. Correct.

11:33AM 12 Q. You're licensed to practice both in federal  
11:33AM 13 court and state court.

11:33AM 14 A. Correct.

11:33AM 15 Q. At the time of Mr. Halprin's trial you had been  
11:33AM 16 licensed for 18 years.

11:33AM 17 A. Correct.

11:33AM 18 Q. When you were appointed weren't you on the list  
11:33AM 19 for the First Administrative Judicial Region's qualified  
11:33AM 20 death penalty defense counsel?

11:33AM 21 A. Yes.

11:33AM 22 Q. You have to meet certain retirements to be on  
11:33AM 23 that list, correct?

11:33AM 24 A. Yes.

11:33AM 25 Q. You can't be first chair in a death penalty

11:33AM 1 case in Dallas County or in the state if you have been  
11:33AM 2 found ineffective on a death penalty case in the past,  
11:33AM 3 correct?

11:33AM 4 A. I didn't know that.

11:33AM 5 THE COURT: Has that ruled changed  
11:33AM 6 recently?

11:33AM 7 MS. SMITH: Not to my knowledge.

11:33AM 8 MR. UDASHEN: I don't think it's changed.  
11:33AM 9 I'm not aware if it changed.

11:34AM 10 MS. SMITH: I think it might be in the  
11:34AM 11 requirements list.

11:34AM 12 Q. (By Ms. Smith) You're not on the list anymore,  
11:34AM 13 correct?

11:34AM 14 A. Correct.

11:34AM 15 Q. That was by choice, right?

11:34AM 16 A. Correct.

11:34AM 17 Q. Why did you decide not to stay on the list?

11:34AM 18 A. These cases are just too long and drawn-out. I  
11:34AM 19 don't think you could ever be prepared the way you need  
11:34AM 20 to be unless you can do it like the State does where  
11:34AM 21 it's the only case or two that you are going to try for  
11:34AM 22 a year and even then maybe not.

11:34AM 23 After you complete the case it's about six  
11:34AM 24 months before your practice gets back to where it should  
11:34AM 25 be because you devoted so much time to one case.

11:34AM 1 There's this aspect.

11:34AM 2 Q. Having your papers graded, right?

11:34AM 3 A. Correct.

11:35AM 4 Q. Did that sour your experience any?

11:35AM 5 A. No.

11:35AM 6 Q. Halprin wasn't your first death penalty case?

11:35AM 7 A. Second.

11:35AM 8 Q. First one was William Rayford.

11:35AM 9 A. Correct.

11:35AM 10 Q. You handled that with Paul Brauchle?

11:35AM 11 A. Correct.

11:35AM 12 Q. That was one year before you got appointed to  
11:35AM 13 Halprin's case.

11:35AM 14 A. Correct.

11:35AM 15 Q. You weren't found ineffective on Mr. Rayford's  
11:35AM 16 case.

11:35AM 17 A. Not to my knowledge.

11:35AM 18 Q. Have you spoken at all to Mr. Halprin in letter  
11:35AM 19 or any other way since the trial?

11:35AM 20 A. No.

11:35AM 21 Q. When was the last time you spoke to him?

11:35AM 22 A. Probably immediately after the trial to kind of  
11:35AM 23 explain the appeals process to him and that would be it.

11:35AM 24 Q. Once he was extradited back to Dallas from  
11:35AM 25 Colorado you and Mr. King met with him, correct?

11:36AM 1 A. Correct.

11:36AM 2 Q. You continued to meet with him throughout the  
11:36AM 3 pending proceeding?

11:36AM 4 A. Correct.

11:36AM 5 Q. Did you discuss your strategy with him?

11:36AM 6 A. Yes.

11:36AM 7 Q. Did he help in the formation of the strategy?

11:36AM 8 A. He helped a lot in mitigation and punishment;  
11:36AM 9 as to guilt-innocence, not as much but some.

11:36AM 10 Q. He had already spoken to the media before you  
11:36AM 11 got appointed on the case; is that correct?

11:36AM 12 A. Yes.

11:36AM 13 Q. He had already told his story to basically the  
11:36AM 14 nation.

11:36AM 15 A. Yes.

11:36AM 16 Q. Stuck you with a story then, didn't it?

11:36AM 17 A. Yes.

11:36AM 18 Q. Was Mr. Halprin ever dissatisfied or upset with  
11:36AM 19 you or Mr. King in your representation of him?

11:36AM 20 A. No, not that he made us aware of -- not that he  
11:37AM 21 made me aware.

11:37AM 22 Q. Okay. You mentioned you were first chair and  
11:37AM 23 Mr. King was second chair, correct?

11:37AM 24 A. Correct.

11:37AM 25 Q. Was that really an actual distinction or were

11:37AM 1 the responsibilities pretty equally divided?

11:37AM 2 A. No. They were equally divided. I was first  
11:37AM 3 chair because Judge Lenoir appointed me. And I called  
11:37AM 4 Mr. King, asked him if he would assist me in the  
11:37AM 5 handling of the case. And so because I was the one  
11:37AM 6 appointed, I was the first chair.

11:37AM 7 But we really didn't have any ranking as to  
11:37AM 8 who was number one and number two. Mr. King's far more  
11:37AM 9 experienced than me. One of the reasons I chose him is  
11:37AM 10 because he had just been on the bench as a district  
11:37AM 11 judge and I was sure during that time he probably had  
11:37AM 12 tried a capital or two and so I asked him to work with  
11:38AM 13 me. But I was just designated first because I was the  
11:38AM 14 one that was appointed originally.

11:38AM 15 Q. I think you said before you were primarily in  
11:38AM 16 charge of mitigation and Mr. King was primarily in  
11:38AM 17 charge of the pretrial motions and Mr. Halprin and a lot  
11:38AM 18 of the witnesses in the guilt phase.

11:38AM 19 A. Yes. I specifically remember mitigation myself  
11:38AM 20 because I contacted Dr. Goodness after getting a  
11:38AM 21 referral from Texas Criminal Defense Lawyers  
11:38AM 22 Association. I remember him specifically dealing with  
11:38AM 23 Mr. Halprin and everybody else. We just kind of divided  
11:38AM 24 up as we went along.

11:38AM 25 Q. Dr. Goodness came highly recommended.

11:38AM 1 A. She did.

11:38AM 2 Q. She's fairly experienced, isn't she?

11:38AM 3 A. Yes.

11:38AM 4 Q. She's been involved in several death penalty  
11:39AM 5 trials in Dallas County since she assisted you.

11:39AM 6 A. Correct.

11:39AM 7 Q. In addition to Dr. Goodness, you had the help  
11:39AM 8 of the Death Penalty Project Clinic at SMU law school.

11:39AM 9 A. Correct.

11:39AM 10 Q. The students who were supervised by a  
11:39AM 11 professor, right?

11:39AM 12 A. Yes, they were.

11:39AM 13 Q. They conducted some research for you.

11:39AM 14 A. Well, actually they conducted a lot of research  
11:39AM 15 on their own. They took on this project and were  
11:39AM 16 working on things before they ever contacted me. The  
11:39AM 17 professor contacted me and told me, "If you need our  
11:39AM 18 help, let us know." It was very, very early on. I  
11:39AM 19 don't think I had ever met Mr. Halprin.

11:39AM 20 I don't think I had gotten any discovery or  
11:39AM 21 anything when they originally contacted me. And then  
11:39AM 22 once the case kind of got rolling I decided, you know,  
11:40AM 23 what could it hurt to have some extra help. And then I  
11:40AM 24 went and talked with them and gave them some of my  
11:40AM 25 ideas, what I was going to try to do.

11:40AM 1 They had already done a lot of stuff on  
11:40AM 2 their own that I wasn't interested in. But they were  
11:40AM 3 the ones that had done a lot of the -- scouring the  
11:40AM 4 Internet to find what people had said about the case and  
11:40AM 5 finding these names of people who said, "I knew Randy  
11:40AM 6 Halprin and he was a good guy," or bad guy or whatever.  
11:40AM 7 And we submitted a lot of that to Dr. Goodness to follow  
11:40AM 8 up on.

11:40AM 9 Q. They didn't just do legal research. They did a  
11:40AM 10 little investigating, didn't they?

11:40AM 11 A. Yes.

11:40AM 12 Q. They were able to get some location information  
11:40AM 13 for some of your witnesses.

11:40AM 14 A. I believe they did.

11:40AM 15 Q. They did a pretty good job, right?

11:40AM 16 A. I think so.

11:40AM 17 MS. SMITH: May I approach?

11:41AM 18 Q. (By Ms. Smith) Show you what's marked State's  
11:41AM 19 Writ Hearing Exhibit M and N.

11:41AM 20 A. N I recognize right away. This is the research  
11:41AM 21 from the SMU class.

11:41AM 22 Q. There were two different sessions of students  
11:41AM 23 that worked on this for you, Fall 2001 session and  
11:41AM 24 Spring 2002 session. Does that sound right?

11:41AM 25 A. You know what? I didn't actually recall that.

11:41AM 1 But as I earlier testified, they had done a lot of stuff  
11:41AM 2 beforehand. And so I guess the first group would have  
11:41AM 3 done all of that and the second group focused more on  
11:41AM 4 what they asked them to do.

11:41AM 5 Q. Okay.

11:41AM 6 MS. SMITH: Offer State's Writ Hearing  
11:41AM 7 Exhibit Number M and N.

11:41AM 8 MR. ANTON: No objection.

11:41AM 9 (State's Writ Hearing Exhibit M, N  
11:41AM 10 admitted into evidence and are attached to  
11:42AM 11 this transcript.)

11:42AM 12 Q. (By Ms. Smith) You have talked a little bit  
11:42AM 13 about the discovery that you received from the State.  
11:42AM 14 Do you recall how many pages of discovery you received?  
11:42AM 15 Is it safe to say thousands of pages?

11:42AM 16 A. Thousands of pages. We had at least two of  
11:42AM 17 those boxes that copy paper comes in filled with  
11:42AM 18 documents. I say two. It was probably ten of those.

11:42AM 19 Q. You wouldn't be surprised if I told you you  
11:42AM 20 received over 6000 pages of discovery?

11:42AM 21 A. Not at all.

11:42AM 22 Q. I think the Judge has mentioned this. Your  
11:42AM 23 client Mr. Halprin was the fifth of the defendants to be  
11:42AM 24 tried.

11:42AM 25 A. Correct.



11:42AM 1 Q. You had the transcripts from the other trials.

11:42AM 2 A. Yes.

11:42AM 3 Q. So you had a preview of the State's case before  
11:42AM 4 you got into the courtroom, correct?

11:42AM 5 A. Correct.

11:42AM 6 Q. What was your opinion of the State's case?

11:43AM 7 A. It's pretty open-ended.

11:43AM 8 Q. Was it a pretty strong case?

11:43AM 9 THE COURT: Excuse me. I think it might be  
11:43AM 10 more helpful if you broke it down into the two different  
11:43AM 11 stages.

11:43AM 12 MS. SMITH: Okay.

11:43AM 13 Q. (By Ms. Smith) On the issue of guilt how strong  
11:43AM 14 would you rate the State's case?

11:43AM 15 A. Nine and a half out of ten.

11:43AM 16 Q. You've practiced in Dallas County for quite a  
11:43AM 17 while, correct?

11:43AM 18 A. Correct.

11:43AM 19 Q. Dallas County D. A.'s office doesn't go for the  
11:43AM 20 death penalty a lot, do they?

11:43AM 21 A. Percentage-wise, no.

11:43AM 22 Q. They're pretty selective, correct?

11:43AM 23 A. Yes.

11:43AM 24 Q. Typically the cases we choose to seek death on  
11:43AM 25 are pretty strong, correct?

11:43AM 1 A. I would agree.

11:43AM 2 Q. The facts in this case were probably even more  
11:43AM 3 powerful than the cases that we tried in the past for  
11:44AM 4 death. Would you agree with that?

11:44AM 5 A. Yes.

11:44AM 6 Q. Mr. Shook who was lead prosecutor on these  
11:44AM 7 cases, all six cases, was a seasoned prosecutor at the  
11:44AM 8 time he was assigned to these cases, correct?

11:44AM 9 A. Correct.

11:44AM 10 Q. What's your opinion of Mr. Shook?

11:44AM 11 A. I think he's one of the best prosecutors I have  
11:44AM 12 ever seen.

11:44AM 13 Q. So you respect him.

11:44AM 14 A. Yes.

11:44AM 15 Q. At the point you walked into the courtroom to  
11:44AM 16 represent Mr. Halprin Mr. Shook had gotten convictions  
11:44AM 17 in the death penalty on four of the Texas Seven.

11:44AM 18 A. Yes.

11:44AM 19 Q. Eventually went on to get the death penalty for  
11:44AM 20 Patrick Murphy who was undisputedly a non-shooter,  
11:44AM 21 correct?

11:44AM 22 A. Correct.

11:44AM 23 Q. Your job of defending a Texas Seven defendant,  
11:44AM 24 in particular even Mr. Halprin, was not going to be an  
11:44AM 25 easy one, correct?

11:44AM 1 A. Correct.

11:44AM 2 Q. You talked a little bit about your strategy.  
11:45AM 3 Would you say -- correct me if I'm wrong but would you  
11:45AM 4 say your strategy was that you were going to present him  
11:45AM 5 as a non-shooter, that he was basically a follower, not  
11:45AM 6 a leader, that he wasn't very bright, that he was young  
11:45AM 7 and that generally speaking he wasn't a violent  
11:45AM 8 individual? Would that be an accurate statement of how  
11:45AM 9 you theorized your defense?

11:45AM 10 A. Well, I don't think I could have said that he  
11:45AM 11 wasn't a violent individual because of his prior but as  
11:45AM 12 to everything else, yes.

11:45AM 13 Q. Now, on direct examination Mr. Anton asked you  
11:45AM 14 about how Mr. Halprin got shot in the foot and what your  
11:45AM 15 theory was for trial. And I believe you said that the  
11:45AM 16 theory you went forward with in trial was Mr. Halprin  
11:45AM 17 shot himself in the foot.

11:45AM 18 A. Correct.

11:45AM 19 Q. Would it surprise you to find that actually  
11:45AM 20 your theory at trial was that he was shot in the  
11:46AM 21 crossfire and that it was the State's theory he got shot  
11:46AM 22 in the foot? It's been a long time. I know.

11:46AM 23 A. I don't remember but I remember it was pretty  
11:46AM 24 tough for us for actually present the shot in the foot  
11:46AM 25 theory because we didn't have the sponsoring witness for

11:46AM 1 the document. And as the evidence came out, as we  
11:46AM 2 always do in trials, we kind of work with it as it comes  
11:46AM 3 out.

11:46AM 4 The fact that he got shot in the crossfire  
11:46AM 5 would be just as beneficial to us because once again, it  
11:46AM 6 backs the fact that he didn't shoot or he didn't shoot  
11:46AM 7 at the officer.

11:46AM 8 Q. Actually it's better than him shooting himself  
11:46AM 9 in the foot. That means he had his gun in his hand,  
11:46AM 10 correct?

11:46AM 11 A. Yes.

11:47AM 12 Q. You chose the better of the two theories to go  
11:47AM 13 forward, at least with respect to his foot, correct?

11:47AM 14 A. I don't recall it but that would be better,  
11:47AM 15 yes.

11:47AM 16 Q. Would you agree the longer a jury deliberates a  
11:47AM 17 trial, the better it usually is for the defense?

11:47AM 18 A. Yes.

11:47AM 19 Q. At a minimum, it probably suggests defense  
11:47AM 20 counsel gave the jury something to think about, right?

11:47AM 21 A. Correct.

11:47AM 22 Q. Do you recall how long the jury deliberated in  
11:47AM 23 Halprin's trial in guilt and punishment?

11:47AM 24 A. I don't. I just remember everybody always  
11:47AM 25 saying that they deliberated longer than any of the

11:47AM 1 previous trials.

11:47AM 2 Q. That's correct, both -- both phases. Would you  
11:47AM 3 be surprised to hear that at punishment they actually  
11:47AM 4 deliberated six hours which was about four hours longer  
11:48AM 5 than any other jury of the Texas Seven defendants that  
11:48AM 6 had been tried before and deliberated on the issue of  
11:48AM 7 punishment?

11:48AM 8 A. I wouldn't be surprised because once again, I  
11:48AM 9 kept hearing that. It didn't matter to me. I wasn't  
11:48AM 10 going back and comparing everybody else's, how long  
11:48AM 11 their jury was out compared to ours. But I heard that  
11:48AM 12 several times.

11:48AM 13 Q. They were out overnight, weren't they?

11:48AM 14 A. Yes.

11:48AM 15 Q. That's pretty impressive in a Texas Seven case,  
11:48AM 16 wouldn't you say?

11:48AM 17 A. I can't say. Who knows what juries are  
11:48AM 18 thinking?

11:48AM 19 Q. The only jury that deliberated longer was  
11:48AM 20 Patrick Murphy on punishment and that was only seven and  
11:48AM 21 a half hours and we know he wasn't a shooter.

11:48AM 22 A. Correct.

11:48AM 23 Q. Now, let's talk a little bit about the  
11:48AM 24 mitigation which as you said was your primary area of  
11:48AM 25 responsibility at the trial.

11:48AM 1 A. Correct.

11:48AM 2 Q. You planned to present part of your mitigation  
11:48AM 3 case through Dr. Goodness, right?

11:49AM 4 A. Correct.

11:49AM 5 Q. And she did a battery of tests on Mr. Halprin.

11:49AM 6 A. Yes.

11:49AM 7 Q. She investigated his past, talked to a lot of  
11:49AM 8 people, right?

11:49AM 9 A. Yes.

11:49AM 10 Q. Tried to talk to a lot more, correct?

11:49AM 11 A. Correct.

11:49AM 12 Q. Was it always the plan for her to testify?

11:49AM 13 A. Yes.

11:49AM 14 Q. She helped cultivate quite a few witnesses for  
11:49AM 15 you, didn't she?

11:49AM 16 A. She did.

11:49AM 17 Q. She still does that for defense counsel in  
11:49AM 18 death cases, doesn't she?

11:49AM 19 A. Yes.

11:49AM 20 Q. Because she's good at it, right?

11:49AM 21 A. Yes. She's very personable. I have used her  
11:49AM 22 in other types of cases since the Texas Seven case.

11:49AM 23 Q. Now, there were a lot of people that she  
11:49AM 24 contacted that didn't want to testify, right?

11:49AM 25 A. Yes.

11:49AM 1 Q. People did not want to come in here to help Mr.  
11:49AM 2 Halprin. Would that be safe to say?

11:49AM 3 A. That was very common.

11:49AM 4 Q. But you did have some witnesses come testify in  
11:49AM 5 addition to Dr. Goodness, didn't you?

11:50AM 6 A. I just remember the one big witness that we had  
11:50AM 7 that we were very happy that we got and very happy with  
11:50AM 8 what he testified to.

11:50AM 9 Q. Would that be Jason Goldberg?

11:50AM 10 A. Yes.

11:50AM 11 Q. His mother testified. Do you remember that?

11:50AM 12 A. As you say, I remember it.

11:50AM 13 Q. Mindi Sternblitz?

11:50AM 14 A. I'm just remembering them as you say them.

11:50AM 15 Q. And we have discussed already that you had  
11:50AM 16 planned to call Mr. Halprin's biological mother and  
11:50AM 17 brother Wesley Halprin.

11:50AM 18 A. That's correct.

11:50AM 19 Q. They had been in contact with Dr. Goodness and  
11:50AM 20 were appearing cooperative all the way up until 2003,  
11:50AM 21 weren't they?

11:50AM 22 A. Correct.

11:50AM 23 Q. Right before trial, correct?

11:50AM 24 A. Correct.

11:50AM 25 Q. But was Wesley ever really keen on testifying

11:51AM 1 for Randy to your recollection?

11:51AM 2 A. No, not at all.

11:51AM 3 Q. In fact, didn't he tell a couple of SMU law  
11:51AM 4 students who interviewed him he felt like he was being  
11:51AM 5 put in a very awkward position?

11:51AM 6 A. I don't remember who he told it to but I  
11:51AM 7 remember that was kind of his position. He was very  
11:51AM 8 much worried about the perception of him. He was  
11:51AM 9 worried about the fact that he was still in trouble and  
11:51AM 10 that, you know, Dallas County D. A. might have been able  
11:51AM 11 to contact the D. A. in another county and get him  
11:51AM 12 revoked or cause him such hardships. And he -- he  
11:51AM 13 wasn't very --

11:51AM 14 THE COURT: Just a minute. Let's go off  
11:51AM 15 the record.

11:52AM 16 (Off-the-record discussion)

11:52AM 17 Q. (By Ms. Smith) Did you try to cultivate Mr.  
11:52AM 18 Halprin's adoptive parents to come testify?

11:52AM 19 A. We could never locate the adoptive parents and  
11:52AM 20 we tried very hard. I didn't think from all that I had  
11:52AM 21 heard about them and the opinion I had formed about them  
11:52AM 22 that they would be helpful to us but we did want at  
11:52AM 23 least to talk to them.

11:52AM 24 I don't remember us being able to ever find  
11:52AM 25 them. Seems like they had moved to Florida or something



11:52AM 1 and we weren't very successful in finding them, my  
11:52AM 2 recollection.

11:52AM 3 Q. I believe you told me they didn't want to be  
11:52AM 4 found, did they?

11:52AM 5 A. That was my perception, that they didn't want  
11:52AM 6 to be found.

11:52AM 7 Q. Not putting them on actually was consistent  
11:52AM 8 with your theory because wasn't your theory he was  
11:52AM 9 basically abandoned by his adoptive parents?

11:52AM 10 A. That wasn't theory. That was the truth.

11:53AM 11 Q. While Randy Halprin's mother and brother could  
11:53AM 12 have testified to some mitigating evidence, they also  
11:53AM 13 had damaging information about him, didn't they?

11:53AM 14 A. I'm sure that they could have had damaging  
11:53AM 15 information about him. I think that's what part of  
11:53AM 16 their cause of concern was once they met with  
11:53AM 17 investigators from the State, but sure.

11:53AM 18 Q. They would also have minimized some of the  
11:53AM 19 abuse that Randy had reported to Dr. Goodness, wouldn't  
11:53AM 20 they?

11:53AM 21 A. Potentially.

11:53AM 22 Q. His mother would have minimized the story about  
11:53AM 23 how he fell out of a window. Do you recall that?

11:53AM 24 A. No.

11:53AM 25 Q. Randy -- did not Randy report to Dr. Goodness

11:53AM 1 that he had a scar on his wrist that was the result of  
11:53AM 2 some abuse from his early years? Do you remember that?

11:54AM 3 A. I don't remember. I'm sure that he did. It's  
11:54AM 4 in Dr. Goodness' report but I don't recall.

11:54AM 5 Q. Were you aware his mother told both the  
11:54AM 6 prosecutors and an investigator that that incident was  
11:54AM 7 not the product of abuse?

11:54AM 8 A. I don't remember.

11:54AM 9 Q. She also had a story about how Mr. Halprin set  
11:54AM 10 his aunt's couch on fire. Do you remember that?

11:54AM 11 A. Vaguely. I remember something to that effect.

11:54AM 12 Q. She had a story about how he shoved pennies  
11:54AM 13 down his little brother's throat.

11:54AM 14 A. I remember Mr. Shook talking about that. I  
11:54AM 15 remember that pretty well. That was one of the things  
11:54AM 16 that I think, you know, he kind of checked them on that  
11:54AM 17 and then they felt like, "Okay. If we come up and  
11:54AM 18 testify, we're going to look stupid."

11:54AM 19 Q. Not just look stupid. They might be giving  
11:55AM 20 some damaging testimony, correct?

11:55AM 21 A. I don't know how they perceived it. I remember  
11:55AM 22 the penny story was pretty strong. Mr. Shook couldn't  
11:55AM 23 wait to talk about the penny story.

11:55AM 24 Q. It showed that Mr. Halprin had a violent  
11:55AM 25 tendency even before the age of five, didn't it?

11:55AM 1 A. I don't remember much about it, the details of  
11:55AM 2 it. I remember that Mr. Shook talked about it a lot and  
11:55AM 3 couldn't wait to talk about it.

11:55AM 4 Q. Wesley Halprin, he was close with his adoptive  
11:55AM 5 parents still, wasn't he?

11:55AM 6 A. That I'm not sure of. I don't recall it that  
11:55AM 7 way but I can't remember.

11:55AM 8 Q. He wasn't going to say they were bad parents,  
11:55AM 9 was he?

11:55AM 10 A. I don't remember.

11:55AM 11 Q. Undoubtedly, Mr. Shook would have elicited any  
11:55AM 12 damaging information from Mr. Halprin's biological  
11:55AM 13 mother and brother.

11:55AM 14 A. Yes.

11:55AM 15 Q. He would have made the most of it, wouldn't he?

11:56AM 16 A. Definitely.

11:56AM 17 Q. You mentioned earlier that Mr. Shook told you  
11:56AM 18 about what they said. Did that happen during trial or  
11:56AM 19 after trial or before?

11:56AM 20 A. It was before or during. I want to say before  
11:56AM 21 because the decision to not call them was made before  
11:56AM 22 based on their change in their demeanor and their  
11:56AM 23 cooperation.

11:56AM 24 Q. When they, as you say, flaked on you and you  
11:56AM 25 made the strategic decision not to call them for fear

11:56AM 1 they might not do well on the stand because they were  
11:56AM 2 reluctant you tried to get the information about his  
11:56AM 3 earliest years in through Dr. Goodness, correct?

11:56AM 4 A. Correct.

11:56AM 5 Q. Part of that was through records she reviewed?

11:56AM 6 A. Correct.

11:56AM 7 Q. And statements people had made to her in  
11:56AM 8 interviews?

11:56AM 9 A. Correct.

11:56AM 10 Q. Isn't it true that statements made to her or  
11:57AM 11 statements made by other people that are recorded in  
11:57AM 12 documents that are out of court statements, they're  
11:57AM 13 hearsay, aren't they?

11:57AM 14 A. Yes.

11:57AM 15 Q. And getting a business records affidavit for  
11:57AM 16 adoption records is not going to take care of all the  
11:57AM 17 multiple levels of hearsay that were probably contained  
11:57AM 18 in the records, correct?

11:57AM 19 A. Would certainly be objectionable. The best  
11:57AM 20 lawyers in Dallas County are going to make those  
11:57AM 21 objections.

11:57AM 22 Q. So you tried to get it in, right?

11:57AM 23 A. Well, we tried to get it in through the  
11:57AM 24 additional witnesses that I called that testified. We  
11:57AM 25 tried to get it in through Randy himself. We tried to

11:57AM 1 get it in.

11:57AM 2 Q. Well, the letters came in, right? You offered  
11:57AM 3 the letters, right, that Mr. Halprin wrote?

11:57AM 4 A. I don't even remember.

11:57AM 5 Q. You don't recall Mr. King walking to the center  
11:57AM 6 of the courtroom and stacking up all of those bound  
11:57AM 7 volumes of letters that he received in discovery?

11:57AM 8 A. No. I'm sorry.

11:57AM 9 Q. That's okay. I know it's been a long time.  
11:58AM 10 Even though the Court didn't let you admit the hearsay  
11:58AM 11 evidence through Dr. Goodness, you still got a lot of  
11:58AM 12 mitigating information before the jury through her,  
11:58AM 13 didn't you?

11:58AM 14 A. Yes.

11:58AM 15 Q. She actually injected some hearsay into her  
11:58AM 16 testimony, didn't she?

11:58AM 17 A. I don't remember but knowing her, she probably  
11:58AM 18 did.

11:58AM 19 Q. She wasn't real happy with the Court's order,  
11:58AM 20 was she?

11:58AM 21 A. No.

11:58AM 22 Q. Would you be surprised if I told you Mr. Shook  
11:58AM 23 had to object five different times during her testimony  
11:58AM 24 as to hearsay?

11:58AM 25 A. No, I wouldn't be surprised.

11:58AM 1 Q. That was after the Court had specifically  
11:58AM 2 instructed Dr. Goodness not to do it; isn't that  
11:58AM 3 correct?

11:58AM 4 A. Yes.

11:58AM 5 Q. Nonetheless, she got out at trial that abuse  
11:58AM 6 and neglect adversely affected Mr. Halprin's early  
11:58AM 7 environment. Do you remember that?

11:58AM 8 A. Not really.

11:58AM 9 Q. Okay. That Mr. Halprin and his brother didn't  
11:58AM 10 come from a good home. You don't get placed up for  
11:59AM 11 adoption when you were five years old if you are from a  
11:59AM 12 good home. Do you remember her saying that?

11:59AM 13 A. I don't.

11:59AM 14 Q. Do you remember her saying that Randy learned  
11:59AM 15 abusive behavior from witnessing it as a child?

11:59AM 16 A. Not specifically, no. I don't doubt that she  
11:59AM 17 said all of that, though.

11:59AM 18 Q. She did a good job, didn't she?

11:59AM 19 A. I think she did.

11:59AM 20 Q. That Mr. Halprin was genetically predisposed to  
11:59AM 21 substance abuse because his biological mother and father  
11:59AM 22 were drug addicts and Halprin's only drug abuse led him  
11:59AM 23 to make bad decisions.

11:59AM 24 A. I recall that.

11:59AM 25 Q. How about the fact that Mr. Halprin suffered

11:59AM 1 from certain learning disorders, ADHD and depression.  
11:59AM 2 And these disorders went untreated in his childhood and  
11:59AM 3 adolescence and that depression disrupted the  
11:59AM 4 development of his social skills?

11:59AM 5 A. I do recall that.

11:59AM 6 Q. How about his adoptive parents failed to meet  
11:59AM 7 his psychological and emotional needs or adequately  
11:59AM 8 treat his learning disorders and ADHD?

12:00PM 9 A. Not specifically. I don't doubt it's in there.

12:00PM 10 Q. His adoptive parents -- that his adoptive  
12:00PM 11 parents were rigid in their parenting of him and that  
12:00PM 12 they overreacted to his, quote, curve balls. Do you  
12:00PM 13 remember that?

12:00PM 14 A. Not specifically.

12:00PM 15 Q. How about that Mr. Halprin didn't receive the  
12:00PM 16 necessary guidance in his childhood?

12:00PM 17 A. Yes, I remember that.

12:00PM 18 Q. How about he suffers from avoidant personality  
12:00PM 19 disorder and he has a strong need to belong and that he  
12:00PM 20 is socially inept and fears social rejection?

12:00PM 21 A. I wish I remember that but I don't remember  
12:00PM 22 that specifically.

12:00PM 23 Q. She gave a lot of good testimony, didn't she?

12:00PM 24 A. I believe that she did.

12:00PM 25 Q. In addition to all of that, she injected

12:00PM 1 hearsay even though she was instructed not to, didn't  
12:00PM 2 she?

12:00PM 3 A. Correct. She knew the game.. She knew what was  
12:01PM 4 at stake. She knew what they were trying to keep out.  
12:01PM 5 She tried to get it in.

12:01PM 6 Q. You had a good mitigation expert, didn't you?

12:01PM 7 A. I believe so.

12:01PM 8 Q. In addition to Goodness' testimony, you  
12:01PM 9 introduced the Goldbergs, Jason Goldberg and his mother.

12:01PM 10 A. Yes.

12:01PM 11 Q. Mindi Sternblitz?

12:01PM 12 A. Yes.

12:01PM 13 Q. Through them they testified that -- tell me if  
12:01PM 14 you recall that -- that Halprin's adoptive father was  
12:01PM 15 unyielding and reactionary.

12:01PM 16 A. Yes.

12:01PM 17 Q. That Mr. Halprin struggled to win his adoptive  
12:01PM 18 father's approval.

12:01PM 19 A. Yes.

12:01PM 20 Q. His adoptive parents and the Goldbergs refused  
12:01PM 21 to let him stay with them after his expulsion from  
12:01PM 22 Oneida Baptist University.

12:01PM 23 A. Yes.

12:01PM 24 Q. In addition to all of that that came out at  
12:01PM 25 punishment, Mr. King also elicited mitigating evidence



12:01PM 1 from your client himself during direct examination in  
12:01PM 2 the guilt phase. Do you remember that?

12:01PM 3 A. I'm sure that was the whole point.

12:02PM 4 Q. He testified to his adoption at the age of  
12:02PM 5 five.

12:02PM 6 A. Correct.

12:02PM 7 Q. That he had academic struggles.

12:02PM 8 A. Yes.

12:02PM 9 Q. He was sent away to boarding school by his  
12:02PM 10 adoptive parents.

12:02PM 11 A. Correct.

12:02PM 12 Q. Talked about his subsequent expulsion from  
12:02PM 13 Oneida University for writing a suicide note on the  
12:02PM 14 bench.

12:02PM 15 A. Correct.

12:02PM 16 Q. Really while Dr. Goodness wasn't allowed to  
12:02PM 17 give her testimony in the narrative form with her Power  
12:02PM 18 Point presentation, you still got all of the mitigating  
12:02PM 19 information about Randy's life before this jury.

12:02PM 20 A. I would agree. She wasn't allowed to give it  
12:02PM 21 exactly like she wanted to give it but I think the jury  
12:02PM 22 got everything that we were trying to offer.

12:02PM 23 Q. If she had been allowed to testify to the  
12:02PM 24 hearsay statements that your client Mr. Halprin made to  
12:02PM 25 her during her evaluations of him, then would not the

12:02PM 1 State also have been able to offer the hearsay  
12:02PM 2 statements he made to the State's doctor in rebuttal?

12:03PM 3 A. Correct.

12:03PM 4 Q. There's a good chance that what Mr. Halprin  
12:03PM 5 said to the State's doctor, Mr. Allen, was probably  
12:03PM 6 going to be prejudicial, wasn't it?

12:03PM 7 A. I think so. You know, I'm just remembering all  
12:03PM 8 of this now as you're asking it but, yeah, those were  
12:03PM 9 issues that we talked about, the balance of what we got  
12:03PM 10 in versus what the State would be able to go into if we  
12:03PM 11 did.

12:03PM 12 Q. A byproduct of you not -- Dr. Goodness not  
12:03PM 13 being able to stand up there and saying, "So and so told  
12:03PM 14 me such and such," you kept out prejudicial testimony  
12:03PM 15 from one of the State's experts, didn't you?

12:03PM 16 A. Potentially, yes.

12:03PM 17 Q. If you had succeeded in putting on even more  
12:03PM 18 damaging or helpful testimony through Dr. Goodness,  
12:03PM 19 could the State not have responded in rebuttal with  
12:04PM 20 additional witnesses?

12:04PM 21 A. Yes.

12:04PM 22 Q. Do you recall a woman by the name of Theresa  
12:04PM 23 Dancy?

12:04PM 24 THE COURT: Spell that last name.

12:04PM 25 MS. SMITH: D A N C Y.

12:04PM 1 A. Not just by her name, no.

12:04PM 2 Q. (By Ms. Smith) If I told you she was a former  
12:04PM 3 girlfriend of Mr. Halprin's, would that help you  
12:04PM 4 remember?

12:04PM 5 A. Actually, no.

12:04PM 6 Q. There's been some additional evidence filed in  
12:04PM 7 this writ proceeding which I don't think you've been  
12:04PM 8 made privy to. Were you aware that Mr. Bosillo, an  
12:04PM 9 investigator for the D. A.'s office, interviewed  
12:04PM 10 witnesses for the State in preparation of trial?

12:04PM 11 A. That he back then in 2003 interviewed witnesses  
12:04PM 12 in preparation for trial?

12:04PM 13 Q. In preparation for Mr. Halprin's trial. Were  
12:05PM 14 you aware that he was assisting Mr. Shook?

12:05PM 15 A. Specifically I don't remember but generally  
12:05PM 16 as -- I mean I know they had investigators that were  
12:05PM 17 going out talking to lots of people.

12:05PM 18 Q. Were you aware of an extraneous offense  
12:05PM 19 involving Mr. Halprin and Ms. Dancy?

12:05PM 20 A. Not that I recall.

12:05PM 21 Q. You were unfamiliar with the fact that during  
12:05PM 22 an argument at a bus stop that he grabbed her, held her  
12:05PM 23 out into oncoming traffic and threatened, "Die, bitch."  
12:05PM 24 You never heard that story?

12:05PM 25 A. I don't remember that. I think I probably

12:05PM 1 would have remembered that.

12:05PM 2 Q. It didn't come out at trial, did it?

12:05PM 3 A. No.

12:05PM 4 Q. Mr. Shook didn't feel the need to put it on,  
12:05PM 5 correct?

12:05PM 6 A. I guess.

12:05PM 7 Q. Safe to say if you put on additional evidence,  
12:05PM 8 he might have put on more damaging evidence like that?

12:05PM 9 A. I'm sure he would have.

12:05PM 10 THE COURT: Okay. It's noon. Let's take a  
12:05PM 11 break. Mark your place. We'll start back up in one  
12:06PM 12 hour.

12:06PM 13 (The noon recess was taken after which  
01:03PM 14 the following proceedings continued:)

01:04PM 15 THE COURT: I believe this witness was on  
01:04PM 16 cross-examination.

01:04PM 17 Q. (By Ms. Smith) Mr. Ashford, on direct  
01:04PM 18 examination I think Mr. Anton was talking to you about  
01:05PM 19 some records related to the Oneida Baptist University  
01:05PM 20 and where they came from. Do you recall where those  
01:05PM 21 documents came from that Dr. Goodness had?

01:05PM 22 A. After looking at the exhibits that you offered  
01:05PM 23 from the SMU students, I remember now that that was  
01:05PM 24 research that they had done into his background as well  
01:05PM 25 as the Internet stuff. They had looked at where he went

01:05PM 1 to school and the school -- the boarding school and they  
01:05PM 2 had combined all of that and given to it me and I gave  
01:05PM 3 it to Dr. Goodness.

01:05PM 4 Q. After the trial was over did Dr. Goodness speak  
01:05PM 5 with you and/or Mr. King about your performance at the  
01:06PM 6 trial, in particular the mitigation case that you put  
01:06PM 7 on?

01:06PM 8 A. You know, seems like she said she thought we  
01:06PM 9 did a good job. I don't remember very much.

01:06PM 10 Q. You're aware she's given an affidavit that was  
01:06PM 11 filed by writ counsel in support of his writ  
01:06PM 12 application. Are you aware of that?

01:06PM 13 A. No.

01:06PM 14 MS. SMITH: May I approach?

01:06PM 15 Q. (By Ms. Smith) You haven't seen her affidavit?

01:06PM 16 A. No.

01:06PM 17 Q. I'm showing you what's marked as State's  
01:06PM 18 Exhibit O. Actually it's the original. I have a copy  
01:06PM 19 that's labeled State's Exhibit O. Do you recognize this?

01:07PM 20 A. I do not recognize it. Of course, it looks  
01:07PM 21 like it was sent to Bubba.

01:07PM 22 Q. Note from Dr. Goodness to Bubba.

01:07PM 23 A. Correct.

01:07PM 24 Q. Didn't show it to you?

01:07PM 25 A. I don't remember Bubba showing to it me. In

01:07PM 1 reading what it says, she may have sent me one also. I  
01:07PM 2 don't recall.

01:07PM 3 MS. SMITH: State offers State's Exhibit 0  
01:07PM 4 and ask that a copy be substituted for record purposes  
01:07PM 5 so this can be returned to the defense trial files.

01:07PM 6 MR. ANTON: No objection.

01:07PM 7 THE COURT: Admitted.

01:07PM 8 (State's Exhibit 0 admitted into  
01:07PM 9 evidence and is attached to this  
01:07PM 10 transcript.)

01:07PM 11 Q. (By Ms. Smith) Would you read the letter?

01:07PM 12 A. June 16th, 2003.

01:07PM 13 Q. Let me stop you there. Four days after trial,  
01:07PM 14 correct?

01:08PM 15 A. I can't tell you yes. Probably so. "Dear  
01:08PM 16 Bubba, capital death case work is hard, hard work with  
01:08PM 17 all too little recognition. Thus, I wanted to be sure  
01:08PM 18 to let you know how impressed I was with you and George  
01:08PM 19 on the Halprin case. Your skill, dedication to your  
01:08PM 20 work and your legal acumen was apparent as I watched you  
01:08PM 21 work in the courtroom. If only all lawyers had your  
01:08PM 22 traits ... I hope you take time to rest as this work is  
01:08PM 23 draining. Warm regards, Kelly Goodness, Ph.d.

01:08PM 24 Q. Right after trial she thought you did an  
01:08PM 25 excellent job, didn't she?

01:08PM 1 A. Apparently.

01:08PM 2 Q. Let's talk for just a moment about Mr.  
01:08PM 3 Halprin's decision to testify. You testified earlier, I  
01:08PM 4 believe, that Mr. King was primarily responsible for  
01:09PM 5 representing Mr. Halprin as a witness at trial.

01:09PM 6 A. Correct.

01:09PM 7 Q. Testified at guilt, right?

01:09PM 8 A. Yes.

01:09PM 9 Q. Was there ever a plan for him to testify at  
01:09PM 10 punishment?

01:09PM 11 A. Plan, no. I think in my experience the  
01:09PM 12 defendant's decision to testify or not testify is always  
01:09PM 13 based on how the evidence is coming out, what factors he  
01:09PM 14 has to weigh as to the positives and negatives. And in  
01:09PM 15 this case it would have been a lot based on how poorly I  
01:09PM 16 felt he performed at guilt-innocence.

01:09PM 17 Q. So he was aware of his right to testify at  
01:09PM 18 punishment.

01:09PM 19 A. Yes.

01:10PM 20 Q. You informed him of that or Bubba did?

01:10PM 21 A. We both did.

01:10PM 22 Q. Whose idea was it for Halprin to testify at  
01:10PM 23 guilt?

01:10PM 24 A. I don't know if it was any of our ideas. I  
01:10PM 25 think we all discussed it. He was aware that he had the

01:10PM 1 right to testify or not testify. I believe he wanted to  
01:10PM 2 testify. So he was allowed to testify.

01:10PM 3 Q. Why did he want to testify?

01:10PM 4 A. I think he wanted to tell his side of the  
01:10PM 5 story.

01:10PM 6 Q. That decision was his alone to make, wasn't it?

01:10PM 7 A. Yes.

01:10PM 8 Q. You let him make that decision, correct?

01:10PM 9 A. Yes.

01:10PM 10 Q. You didn't force him to testify.

01:10PM 11 A. No.

01:10PM 12 Q. When did he decide that he was going to testify  
01:10PM 13 at guilt?

01:10PM 14 A. I don't think there was a final decision made  
01:10PM 15 until the State rested its case. I don't know -- I  
01:11PM 16 don't remember whether we went right into punishment or  
01:11PM 17 we went into punishment the next day or what but nothing  
01:11PM 18 was definite until the State rested its case.

01:11PM 19 Q. Did you have any feelings about whether or not  
01:11PM 20 it would be better for him to testify in guilt or just  
01:11PM 21 in punishment? Did you think it was a good idea?

01:11PM 22 A. I don't know if we ever broke it down that way  
01:11PM 23 as to whether we wanted to save him for punishment or  
01:11PM 24 not. I really don't remember.

01:11PM 25 Q. Did you have any concerns about him testifying?



01:11PM 1 A. I mean the usual concerns. We know he has a  
01:11PM 2 prior that's going to come out. We know that he's going  
01:12PM 3 to be cross-examined by Toby Shook. We know by all  
01:12PM 4 indications, you know, he's not the smartest guy in the  
01:12PM 5 world and Toby Shook is a pretty good prosecutor, the  
01:12PM 6 normal concerns. But I don't remember anything  
01:12PM 7 specific.

01:12PM 8 Q. Did you express those concerns to him?

01:12PM 9 A. I'm sure we did.

01:12PM 10 Q. Did he think he was pretty smart?

01:12PM 11 A. I think so.

01:12PM 12 Q. He thought he could handle Toby Shook?

01:12PM 13 A. I don't know that it came down to that but

01:12PM 14 Randy -- we had one TDC witness whose document in  
01:12PM 15 ranking Randy said that he thought Randy was as dumb as  
01:12PM 16 a rock.

01:13PM 17 I tried to make a lot out of that with that  
01:13PM 18 particular witness and I could look over and see Randy  
01:13PM 19 just upset, getting his feelings hurt that, you know, I  
01:13PM 20 was making that point rather than seeing the reason I  
01:13PM 21 was making that point. So I mean, yeah, there was some  
01:13PM 22 ego involved.

01:13PM 23 Q. Didn't like you presenting him as stupid, did  
01:13PM 24 he?

01:13PM 25 A. No.

01:13PM 1 Q. Well, do you recall what yours and Mr. King's  
01:13PM 2 strategy was in presenting him as a witness? What was  
01:13PM 3 your game plan?

01:13PM 4 A. Well, just to further, number one, his role in  
01:13PM 5 the offense being minimal, the fact that he was the  
01:13PM 6 leader Rivas' little brother and kind of just Rivas took  
01:13PM 7 care of him in TDC because his parents had abandoned  
01:13PM 8 him.

01:14PM 9 He didn't have anything. He didn't have  
01:14PM 10 anybody that ever visited him. He didn't have anybody  
01:14PM 11 to ever put money on his books. And so, you know, this  
01:14PM 12 whole escape was an opportunity for him, the fact that  
01:14PM 13 he didn't fire any shots and as much mitigation in terms  
01:14PM 14 of his background as we could get in at guilt-innocence.

01:14PM 15 Q. So would it be accurate to say that you wanted  
01:14PM 16 on his direct examination to present him as being  
01:14PM 17 non-violent, maybe kind of meek, lonely, follower, maybe  
01:14PM 18 not as smart as he thought he was? Is that a fair  
01:14PM 19 characterization of what you planned to do with him?

01:14PM 20 A. Once again, I can't say non-violent because of  
01:14PM 21 his prior. But even his prior, there was, we thought,  
01:15PM 22 an explanation and mitigating factors; non-violent and  
01:15PM 23 not a leader and a follower, surely in terms of this  
01:15PM 24 offense.

01:15PM 25 Q. Also didn't you try to show that he was the

01:15PM 1 least culpable of all of the co-defendants?

01:15PM 2 A. Absolutely.

01:15PM 3 Q. And the least of a threat?

01:15PM 4 A. Yes.

01:15PM 5 Q. Is it fair to say that if that was your  
01:15PM 6 strategy, then Mr. Halprin's character and given his  
01:15PM 7 decision to testify, his veracity were central to your  
01:15PM 8 strategy in using him as a witness? Does that make  
01:15PM 9 sense?

01:15PM 10 A. Yeah. I mean I think anybody's character and  
01:15PM 11 veracity is essential once they decide to testify.

01:15PM 12 Q. I think you have already mentioned it. By  
01:15PM 13 choosing to testify he was going to be confronted with  
01:15PM 14 his prior conviction, right?

01:15PM 15 A. Yes.

01:15PM 16 Q. Was it a strategic decision on your part to  
01:16PM 17 bring that out instead of letting the State do that on  
01:16PM 18 cross?

01:16PM 19 A. I don't remember what we did but that's  
01:16PM 20 normally the strategy. If you know it's there, bring it  
01:16PM 21 out firsthand.

01:16PM 22 Q. And did you not also -- actually Mr. King --  
01:16PM 23 strategize to bring out a little bit about the escape  
01:16PM 24 and what happened while he had Randy on the stand?

01:16PM 25 A. Yes.

01:16PM 1 Q. All in an effort to portray him as one of the  
01:16PM 2 least violent and least culpable of the Texas Seven?

01:16PM 3 A. Yes.

01:16PM 4 Q. Mr. King also brought out some mitigating  
01:16PM 5 evidence through Mr. Halprin while he was on the stand  
01:16PM 6 about his adoption and things of that nature.

01:16PM 7 A. Correct.

01:16PM 8 Q. That stuff wasn't really relevant to guilt.

01:16PM 9 A. No.

01:16PM 10 Q. But he got that out from Halprin, did he not?

01:16PM 11 A. Yes.

01:16PM 12 Q. There's been some discussion about some  
01:16PM 13 extraneous offenses that have come out through Mr.  
01:17PM 14 Halprin's cross-examination. You weren't really shocked  
01:17PM 15 or surprised that he was being cross-examined as to  
01:17PM 16 prior bad acts, were you?

01:17PM 17 A. As I recall, they weren't even bad acts. It  
01:17PM 18 was just dumb stuff that he said in letters.

01:17PM 19 Q. It really related to his credibility, correct?

01:17PM 20 A. Correct.

01:17PM 21 Q. He had a problem with the truth, didn't he?

01:17PM 22 A. Yes.

01:17PM 23 Q. He was a pathological liar?

01:17PM 24 A. That's what he said in his letter. That was  
01:17PM 25 the problem.

01:17PM 1 Q. He took the opportunity to try to explain the  
01:17PM 2 prior injury to a child conviction, didn't he?

01:17PM 3 A. Yes.

01:17PM 4 Q. Do you remember what he said about the prior  
01:17PM 5 offense?

01:17PM 6 A. No. I mean not specifically what he said. I  
01:17PM 7 know what he had said in the past.

01:18PM 8 Q. Did he try to excuse the offense?

01:18PM 9 A. I don't remember him really trying to minimize  
01:18PM 10 it or excuse it. I don't really recall his testimony  
01:18PM 11 specifically.

01:18PM 12 Q. Let me read you something in the record and see  
01:18PM 13 if this refreshes your recollection. See if you  
01:18PM 14 remember him saying that.

01:18PM 15 Obviously there's no excuse for that injury  
01:18PM 16 to a child. At the time I was going through a lot of  
01:18PM 17 things. I had a lot of problems and I'm not going to  
01:18PM 18 blame it on the drugs and say it was the drugs or  
01:18PM 19 anything like that. But I was under the influence of  
01:18PM 20 LSD and, you know, he had been crying for days, really  
01:18PM 21 weeks. I tried to handle it the best I could and  
01:18PM 22 everything just kept on building up and frustration, I  
01:18PM 23 guess, agitation and, you know, I just snapped.

01:18PM 24 You're nodding your head up and down. You  
01:18PM 25 remember that?

01:18PM 1 A. I remember that.

01:18PM 2 Q. He -- also in his testimony he minimized his  
01:18PM 3 role not only in the murder of Officer Hawkins, but in  
01:19PM 4 the escape, the escape assault and in the extraneous  
01:19PM 5 robberies that the Texas Seven committed when they were  
01:19PM 6 traveling towards Dallas. Do you remember that?

01:19PM 7 A. Well, I mean you're a prosecutor. I'm a  
01:19PM 8 defense lawyer. We don't think he was minimizing. We  
01:19PM 9 thought he was accurately telling the truth that he was,  
01:19PM 10 well, less involved than the other guys and that was our  
01:19PM 11 strategy.

01:19PM 12 Q. Right. He had helped your strategy, correct?

01:19PM 13 A. Yes.

01:19PM 14 Q. Said he didn't hurt anyone in the escape, in  
01:19PM 15 the robberies or the Oshman's?

01:19PM 16 A. That's correct.

01:19PM 17 Q. Never pulled a shank on anyone or threatened  
01:19PM 18 anybody in the escape?

01:19PM 19 A. Correct.

01:19PM 20 Q. He never drew a gun in the Oshman's robbery,  
01:19PM 21 much less shot Officer Hawkins. Isn't that what he  
01:19PM 22 testified to?

01:19PM 23 A. I believe so.

01:19PM 24 Q. How well did Mr. Halprin perform as a witness?

01:19PM 25 A. Well, he did great on direct. He was terrible

01:19PM 1 on cross.

01:19PM 2 Q. Did you expect him to do better on cross?

01:20PM 3 A. In that he did terrible, yes, I expected him to  
01:20PM 4 do better.

01:20PM 5 Q. How good was Mr. Shook's cross-examination?

01:20PM 6 A. Again it wasn't so much how good Mr. Shook's  
01:20PM 7 examination was but it was just how poorly he responded.  
01:20PM 8 Some things Mr. Shook asked him I felt like could have  
01:20PM 9 been easily explained or whatever. He just clammed up.  
01:20PM 10 He didn't say anything.

01:20PM 11 His body language was bad. He put his head  
01:20PM 12 down. He was defeated like, "You got me." And that  
01:20PM 13 just was -- that is just what kills you in front of a  
01:20PM 14 jury.

01:20PM 15 Q. That was unexpected to you that he performed  
01:20PM 16 that badly?

01:20PM 17 A. Yes.

01:21PM 18 Q. Your strategy was to portray Mr. Halprin as  
01:21PM 19 basically non-violent, meek, not very smart, lonely, a  
01:21PM 20 follower, then wasn't it Mr. Shook's strategy to show  
01:21PM 21 that he was violent, he was a full-fledged member of the  
01:21PM 22 Texas Seven, that he was a mass manipulator and that he  
01:21PM 23 was a pathological liar?

01:21PM 24 A. Yes.

01:21PM 25 Q. And in keeping with that strategy, Mr. Shook

01:21PM 1 confronted Halprin with statements he made in numerous  
01:21PM 2 letters that he had written since his capture, correct?

01:21PM 3 A. Correct.

01:21PM 4 Q. When I say "numerous" I mean a lot, lot, lot,  
01:21PM 5 lot, right?

01:21PM 6 A. Yes.

01:21PM 7 Q. Wrote a lot of letters.

01:21PM 8 A. He wrote a lot of letters. It blew us away  
01:21PM 9 when we looked in that box and saw that he wrote all of  
01:21PM 10 those letters after both of us together and separately  
01:21PM 11 told him not to do that.

01:21PM 12 Q. And it's not news to you that sometimes the  
01:21PM 13 State uses letters or sometimes even phone calls  
01:21PM 14 nowadays to impeach defendants on the stand, don't they?

01:22PM 15 A. All the time.

01:22PM 16 Q. So that wasn't unexpected, right?

01:22PM 17 A. No.

01:22PM 18 Q. But the degree to which your client had  
01:22PM 19 committed himself on paper in untruths was a bit of a  
01:22PM 20 surprise to you.

01:22PM 21 A. Yes. And again, you know, it wasn't like he  
01:22PM 22 said, you know, "I did this but I'm kind of lying about  
01:22PM 23 it," or -- I don't remember him speaking to the offense  
01:22PM 24 or to his prior offense. It was just dumb stuff that  
01:22PM 25 shouldn't have been said that Mr. Shook hit him with and



01:22PM 1 he just reacted poorly instead of just relating on past  
01:22PM 2 it.

01:22PM 3 Q. Do you remember him actually inviting or  
01:22PM 4 challenging Mr. Shook to present him with specific  
01:22PM 5 instances of lies?

01:23PM 6 A. I don't.

01:23PM 7 Q. Be surprised if there were several instances of  
01:23PM 8 that in the record?

01:23PM 9 A. No.

01:23PM 10 Q. And given that they were Mr. Halprin's own  
01:23PM 11 statements, they weren't hearsay, were they?

01:23PM 12 A. No.

01:23PM 13 Q. And Mr. Shook used Mr. Halprin's admissions  
01:23PM 14 that he caused his parents trouble, he told lots of lies  
01:23PM 15 in his lifetime. There's nothing wrong with Mr. Shook  
01:23PM 16 confronting Mr. Halprin with that kind of information,  
01:23PM 17 was there?

01:23PM 18 A. No.

01:23PM 19 Q. After all, your client put his credibility at  
01:23PM 20 issue the minute he took the stand, didn't he?

01:23PM 21 A. Yes.

01:23PM 22 Q. Didn't just put his credibility in issue, put  
01:23PM 23 his character at issue, too, didn't, he?

01:23PM 24 A. Yes.

01:23PM 25 Q. Do you remember Mr. Halprin representing

01:23PM 1 himself to Mr. Shook as a reformed pathological liar?

01:23PM 2 A. No.

01:24PM 3 THE COURT: Where are we going with this?

01:24PM 4 MS. SMITH: I'm almost done.

01:24PM 5 Q. (By Ms. Smith) To the extent that Mr. Shook  
01:24PM 6 confronted Mr. Halprin with any lies and to the extent  
01:24PM 7 those lies were bad acts, he did that on  
01:24PM 8 cross-examination, right?

01:24PM 9 A. Yes.

01:24PM 10 Q. The State's obligation to give notice to the  
01:24PM 11 defense of extraneous offenses under Rule 404 only  
01:24PM 12 applies to the State's case in chief, doesn't it?

01:24PM 13 A. Yes.

01:24PM 14 Q. So Mr. Shook didn't have the obligation to tell  
01:24PM 15 you in advance that he was going to be crossing Mr.  
01:24PM 16 Halprin with those acts, did he? Was not required to  
01:24PM 17 give you notice of those under the rules, was he?

01:24PM 18 A. Technically probably not. I just don't --

01:24PM 19 THE COURT: Which acts?

01:24PM 20 Q. (By Ms. Smith) Well, for instance, that he  
01:24PM 21 claimed he fathered a child with another woman. Do you  
01:24PM 22 remember that allegation?

01:24PM 23 A. I don't and again, you know, I don't remember  
01:25PM 24 specifics but this stuff that I remember, it's  
01:25PM 25 questionable what the Code talks about when they talk

01:25PM 1 about bad acts.

01:25PM 2 Q. You didn't think they were bad acts?

01:25PM 3 A. They weren't crimes. They weren't specific  
01:25PM 4 lies where he said one thing under oath one time. It  
01:25PM 5 was just dumb stuff. And he just used it to shake and  
01:25PM 6 rattle him and he didn't handle it very well.

01:25PM 7 Q. Even though the State didn't have a legal  
01:25PM 8 obligation to give you notice of those acts, you did  
01:25PM 9 have copies of all of the letters that Halprin wrote,  
01:25PM 10 didn't you?

01:25PM 11 A. Yes.

01:25PM 12 Q. You did have notice, didn't you?

01:25PM 13 A. Yes.

01:25PM 14 Q. Did you have any reason not to object to Mr.  
01:25PM 15 Shook's cross of your client with these lies, any  
01:25PM 16 strategic reason for not objecting?

01:26PM 17 A. Again that was Mr. King's witness but, you  
01:26PM 18 know, when you try cases and a defendant takes the  
01:26PM 19 stand --

01:26PM 20 THE COURT: Excuse me.

01:26PM 21 Mr. Ashford, during cross-examination of  
01:26PM 22 Mr. Halprin if you had stood up and objected what would  
01:26PM 23 the trial judge at the time done?

01:26PM 24 THE WITNESS: I believe he would have  
01:26PM 25 instructed me that that was Mr. King's witness and

01:26PM 1 therefore I wouldn't be able to make an objection.

01:26PM 2 THE COURT: Let's move on.

01:26PM 3 Q. (By Ms. Smith) Mr. King did make several  
01:26PM 4 objections, handful of objections during Mr. Halprin's  
01:26PM 5 cross-examination, didn't he?

01:26PM 6 A. I don't recall specifically but I'm sure he  
01:26PM 7 did.

01:26PM 8 Q. Didn't just sit on his hands throughout that,  
01:26PM 9 did he?

01:26PM 10 A. I don't think so.

01:26PM 11 Q. Do you recall him objecting to Mr. Shook  
01:26PM 12 reading from documents not in evidence, namely, the  
01:26PM 13 letters?

01:26PM 14 A. Specifically, no.

01:26PM 15 Q. Do you remember him objecting to Mr. Shook's  
01:27PM 16 offering certain documents on cross like suicide note by  
01:27PM 17 Mr. Harper or the Spec war commandments?

01:27PM 18 A. The last one I remember.

01:27PM 19 Q. When Mr. Halprin didn't do well on cross Mr.  
01:27PM 20 King tried to turn that to his advantage, didn't he?

01:27PM 21 A. Yes.

01:27PM 22 Q. He's the one that offered several binders full  
01:27PM 23 of the letters that Mr. Halprin had written?

01:27PM 24 A. Yes.

01:27PM 25 Q. And he used those letters and you basically

01:27PM 1 characterized those inconsequential lies to portray Mr.  
01:27PM 2 Halprin as some sort of pathetic, lonely individual who  
01:27PM 3 is writing everybody who will take an envelope and stamp  
01:27PM 4 on it?

01:27PM 5 A. Tried to make lemonade out of the lemons he  
01:27PM 6 got.

01:27PM 7 Q. Also used it to support your theory that Mr.  
01:28PM 8 Halprin wasn't very bright.

01:28PM 9 A. Correct.

01:28PM 10 Q. Tried to take on a seasoned prosecutor and  
01:28PM 11 reaped the consequences.

01:28PM 12 A. Correct.

01:28PM 13 Q. Mr. Halprin did try to portray himself as meek  
01:28PM 14 on the stand. Do you recall that? Do you recall a  
01:28PM 15 moment when he actually interrupted the proceedings  
01:28PM 16 during direct examination and asked the Judge to  
01:28PM 17 instruct the prosecutors to stop looking at him?

01:28PM 18 A. Not until you said it but, yes, I think so.

01:28PM 19 Q. He did this in front of the jury, too, didn't  
01:28PM 20 he?

01:28PM 21 A. Yes.

01:28PM 22 Q. Put the Judge in a very awkward position,  
01:28PM 23 didn't he?

01:28PM 24 A. Yes.

01:28PM 25 Q. The Judge admonished him outside the presence

01:28PM 1 of the jury later.

01:28PM 2 A. I don't recall.

01:28PM 3 Q. Made himself look a little pitiful in that  
01:28PM 4 moment, didn't he?

01:28PM 5 A. As I recall it.

01:28PM 6 Q. Let's move on and talk about the ranking  
01:28PM 7 document. You made numerous attempts, you and Mr. King,  
01:29PM 8 to get this document in evidence, didn't you?

01:29PM 9 A. Yes.

01:29PM 10 Q. Were you aware that since trial the author, Mr.  
01:29PM 11 Hank Whitman, has given an affidavit about the document?

01:29PM 12 A. No.

01:29PM 13 Q. You are aware, however, the document is based  
01:29PM 14 on hearsay statements related to Mr. Whitman, correct?

01:29PM 15 A. Yes.

01:29PM 16 Q. The document is hearsay in that it's Mr.  
01:29PM 17 Whitman's statements but it's hearsay on top of that  
01:29PM 18 because it's hearsay statements of other people, not Mr.  
01:29PM 19 Whitman, right?

01:29PM 20 A. Yes.

01:29PM 21 Q. There's multiple levels of the hearsay in this  
01:29PM 22 document, correct?

01:29PM 23 A. Yes.

01:29PM 24 MS. SMITH: May I approach?

01:29PM 25 Q. (By Ms. Smith) I'm showing you what's Mr. Hank

01:29PM 1 Whitman's affidavit in these writ proceedings. I want  
01:30PM 2 you to read if you would the highlighted portion.

01:30PM 3 A. Aloud?

01:30PM 4 Q. If you would.

01:30PM 5 A. The document was meant to indicate solely who  
01:30PM 6 was the most likely to have led the group, not who would  
01:30PM 7 have been the best leader but who was the actual leader.  
01:30PM 8 It was not a reflection of most to least dangerous. All  
01:30PM 9 of the Texas Seven are dangerous and in my opinion Rivas  
01:30PM 10 is the most dangerous.

01:30PM 11 The last three defendants in the ranking  
01:30PM 12 document, Garcia, Murphy and Halprin, were equal in  
01:30PM 13 leadership qualities and are interchangeable in rank.  
01:30PM 14 Halprin was likely a late addition to the Texas Seven  
01:30PM 15 and only got involved a week or two before the escape.

01:30PM 16 Q. So according to Mr. Whitman, the document  
01:31PM 17 doesn't rank the Texas Seven from the most to least  
01:31PM 18 dangerous, does it?

01:31PM 19 A. According to him.

01:31PM 20 Q. It actually also doesn't rank Mr. Halprin dead  
01:31PM 21 last, does it?

01:31PM 22 A. According to that document.

01:31PM 23 Q. Is it safe to say that if you had located Mr.  
01:31PM 24 Whitman and you had succeeded in presenting him as a  
01:31PM 25 witness and a sponsor to the document that the State

01:31PM 1 would have brought these facts out on cross-examination?

01:31PM 2 A. Probably so.

01:31PM 3 Q. Mr. Shook probably would have figured that out?

01:31PM 4 A. Yeah. He would have used that particular  
01:31PM 5 testimony to turn that around in his favor.

01:31PM 6 Q. I think you mentioned this already. You  
01:31PM 7 basically got the value out of that document anyway,  
01:31PM 8 didn't you?

01:31PM 9 A. Yes. I asked every single witness who  
01:31PM 10 testified individually as to the accounts they had given  
01:32PM 11 if they had been asked to do a ranking, I believe. I  
01:32PM 12 started asking each one of them or tried to introduce it  
01:32PM 13 through each one of them and in the end the jury told us  
01:32PM 14 they got it. They knew what the deal was.

01:32PM 15 THE COURT: When did the jury tell you  
01:32PM 16 that?

01:32PM 17 THE WITNESS: We spoke to the jury after  
01:32PM 18 the final verdict in the jury room.

01:32PM 19 THE COURT: Who did?

01:32PM 20 THE WITNESS: Myself and Mr. King.

01:32PM 21 THE COURT: Who else was present?

01:32PM 22 THE WITNESS: Myself, Mr. King and  
01:32PM 23 basically all of the jurors. I don't think we were back  
01:32PM 24 there at the same time as the prosecutor or the Judge.

01:32PM 25 THE COURT: Go ahead.



01:32PM 1 Q. (By Ms. Smith) You brought out the fact that  
01:32PM 2 there was such a document through Mr. Woods, didn't you?  
01:33PM 3 He was a witness at trial.

01:33PM 4 A. Yes.

01:33PM 5 Q. You also located overnight a witness Elizabeth  
01:33PM 6 Mullin from TDC in the Office of Inspector General and  
01:33PM 7 you used her to try to sponsor the document, didn't you?

01:33PM 8 A. I didn't remember that we had done that.

01:33PM 9 Q. But that happened, didn't it?

01:33PM 10 A. Yes.

01:33PM 11 Q. You elicited information similar to what's  
01:33PM 12 contained in the document from witnesses that testified  
01:33PM 13 at punishment, right?

01:33PM 14 A. Correct.

01:33PM 15 Q. I think you did it at guilt, too.

01:33PM 16 A. Yes.

01:33PM 17 Q. Patrick Moczygemba -- I think you alluded to  
01:33PM 18 this testimony earlier but he testified that he was  
01:33PM 19 interviewed by the escapees and in his opinion Halprin  
01:33PM 20 was as dumb as a bag of rocks, just a follower and if  
01:34PM 21 Mr. Moczygemba had to rank him, he would rank him as the  
01:34PM 22 least intelligent of the Texas Seven. Do you remember  
01:34PM 23 that?

01:34PM 24 A. Yes.

01:34PM 25 Q. There was another TDC employee, Mark Burgess.

01:34PM 1 Do you remember him testifying that Halprin was not the  
01:34PM 2 leader type?

01:34PM 3 A. Yes.

01:34PM 4 Q. You and Mr. King got all of the confessions of  
01:34PM 5 the Texas Seven co-defendants admitted at trial, didn't  
01:34PM 6 you?

01:34PM 7 A. Yes, I believe we did that -- well, yes, we  
01:34PM 8 did.

01:34PM 9 Q. Of those that gave confessions, right?

01:34PM 10 A. Yes.

01:34PM 11 Q. Did any other defensive team?

01:34PM 12 THE COURT: When you say "all of the  
01:34PM 13 confessions" are you referring to all written  
01:34PM 14 statements?

01:34PM 15 MS. SMITH: I'm referring to the  
01:34PM 16 confessions they gave to law enforcement upon their  
01:34PM 17 capture.

01:34PM 18 THE COURT: Written?

01:34PM 19 MS. SMITH: Yes, written.

01:34PM 20 Q. (By Ms. Smith) Some of those confessions  
01:34PM 21 characterized Halprin as a follower rather than a  
01:34PM 22 leader, didn't they?

01:34PM 23 A. I believe they did.

01:35PM 24 Q. So the testimony that you did get in that you  
01:35PM 25 did elicit was cumulative of what was purportedly within

01:35PM 1 this ranking document, wasn't it?

01:35PM 2 A. Correct. Even though we couldn't get the  
01:35PM 3 ranking document in, through the testimony of all the  
01:35PM 4 other witnesses we had and by me laying the predicate  
01:35PM 5 with those witnesses to get the ranking document in  
01:35PM 6 every time I offered it, it was pretty clear what it  
01:35PM 7 was. And, like I said, the jury told us that they  
01:35PM 8 understood what it was.

01:35PM 9 Q. Yeah. You kind of left the impression, didn't  
01:35PM 10 you, that the State was trying to keep something good  
01:35PM 11 out?

01:35PM 12 A. Exactly.

01:35PM 13 Q. That was an advantage to your --

01:35PM 14 A. I don't think we left that impression. I think  
01:35PM 15 the State did that to themselves but that definitely was  
01:35PM 16 there.

01:35PM 17 Q. When this issue was raised on direct appeal by  
01:35PM 18 yourself and Mr. Muhammed the CCA found that it was  
01:35PM 19 harmless because you presented a significant amount of  
01:36PM 20 mitigating evidence that was cumulative of that. Do you  
01:36PM 21 remember that?

01:36PM 22 A. I don't remember that but I could see that  
01:36PM 23 point.

01:36PM 24 Q. Let's talk a little bit about your decision not  
01:36PM 25 to call Mr. Rivas or any of the other co-defendants to

01:36PM 1 testify for your client. I believe you said you  
01:36PM 2 considered it with Mr. King. You two discussed it?

01:36PM 3 A. Yes.

01:36PM 4 Q. You never asked him to testify, Mr. Rivas.

01:36PM 5 A. No.

01:36PM 6 Q. Didn't ask any of the co-defendants to testify,  
01:36PM 7 right?

01:36PM 8 A. No.

01:36PM 9 Q. You did that because?

01:36PM 10 A. As I testified, the six Texas Seven members  
01:36PM 11 were in my opinion six of the most hated men in America.  
01:36PM 12 People were talking about them all the time. It was on  
01:36PM 13 national news. It was on local news, just lawyers  
01:37PM 14 talking about it in the courthouse.

01:37PM 15 Just got the feeling that nobody wanted to  
01:37PM 16 hear from any of them. Their credibility just wasn't  
01:37PM 17 going to be very good and it wasn't just going to leave  
01:37PM 18 a good impression with the jury.

01:37PM 19 Q. Plus, wasn't it your theory to distance your  
01:37PM 20 client from his co-defendants as much as possible?

01:37PM 21 A. Well, yeah. I don't know if that factored into  
01:37PM 22 it but that certainly was a consideration, could be a  
01:37PM 23 consideration.

01:37PM 24 Q. You had the records of the trial. Were you  
01:37PM 25 familiar with Mr. Rivas' testimony at his own trial?

01:37PM 1 A. Yes.

01:37PM 2 Q. How do you think he performed at that trial?

01:37PM 3 A. Just the real liar, the real very just icy guy  
01:38PM 4 who is just very icy and impersonal and just robbing  
01:38PM 5 people and it's not even that big of a deal. And I  
01:38PM 6 thought that would have come across.

01:38PM 7 The little bit that we would have got from  
01:38PM 8 him from trying to help Mr. Halprin, the bad impression  
01:38PM 9 that he left otherwise and probably what Mr. Shook would  
01:38PM 10 have done with him just wasn't worth it.

01:38PM 11 Q. Mr. Rivas did testify in Mr. Murphy's trial,  
01:38PM 12 didn't he?

01:38PM 13 A. I don't remember.

01:38PM 14 Q. Didn't do him any good, did it?

01:38PM 15 A. Apparently not.

01:38PM 16 Q. Were you aware that Mr. Rivas and co-defendants  
01:38PM 17 Michael Rodriguez and Patrick Murphy testified in a  
01:38PM 18 hearing in these writ proceedings in May 2008?

01:39PM 19 A. No.

01:39PM 20 Q. You haven't seen their testimony?

01:39PM 21 A. No.

01:39PM 22 Q. Were you -- would you be surprised to hear that  
01:39PM 23 some of their testimony wasn't exactly helpful to your  
01:39PM 24 client?

01:39PM 25 THE COURT: Excuse me, Ms. Smith.

01:39PM 1 MS. SMITH: Would you like me to move on?

01:39PM 2 THE COURT: Yeah. Please move on.

01:39PM 3 Q. (By Ms. Smith) One of the claims in these  
01:39PM 4 proceedings is you should have put on oral statements  
01:39PM 5 made by some of the co-defendants, Mr. Murphy, Mr.  
01:39PM 6 Rodriguez, Mr. Rivas to law enforcement after they were  
01:39PM 7 captured.

01:39PM 8 These are oral statements, not written  
01:39PM 9 statements that relate to whether or not Mr. Halprin  
01:39PM 10 fired a weapon at the Oshman's. Are you familiar with  
01:39PM 11 those claims? I know it's been a while.

01:40PM 12 A. I can't really say that I remember.

01:40PM 13 Q. Okay. To the extent that a co-defendant made a  
01:40PM 14 statement, an oral statement to law enforcement, that  
01:40PM 15 would have been hearsay, wouldn't it?

01:40PM 16 A. Could be hearsay, could be a statement against  
01:40PM 17 interests.

01:40PM 18 Q. To be a statement against interests it has to  
01:40PM 19 be indicia of reliability, doesn't it?

01:40PM 20 A. Yes.

01:40PM 21 Q. Would you agree that all of the co-defendants  
01:40PM 22 gave statements that were at times helpful to their  
01:40PM 23 future prosecution but also hurt -- I mean they gave  
01:40PM 24 statements that tried to minimize what they did and they  
01:40PM 25 gave statements that acknowledged what they did, didn't

01:40PM 1 they?

01:40PM 2 A. Yes.

01:41PM 3 Q. To some extent they were blame-shifting,  
01:41PM 4 weren't they?

01:41PM 5 A. I think so.

01:41PM 6 Q. Wouldn't that have been a hurdle to you getting  
01:41PM 7 them in as a statement against interests?

01:41PM 8 A. I think so. I think we looked at the  
01:41PM 9 statements and even though there were some statements  
01:41PM 10 that might have been helpful, when you put them all  
01:41PM 11 together nobody was telling a consistent story. And Mr.  
01:41PM 12 Shook would have just been able to go through, "This  
01:41PM 13 statement says this but this statement says that. This  
01:41PM 14 statement says this. This is inconsistent with that."  
01:41PM 15 And for the little bit we would have been able to gain,  
01:41PM 16 it might have just opened up more damage.

01:41PM 17 Q. Mr. Newbury made a statement to a Colorado  
01:42PM 18 Springs detective that he shot Rivas. Does that ring a  
01:42PM 19 bell that's one of the oral statements at issue?

01:42PM 20 A. No.

01:42PM 21 Q. The fact of the matter is Rivas was shot twice,  
01:42PM 22 wasn't he?

01:42PM 23 A. I don't recall.

01:42PM 24 Q. If you had offered these statements in these  
01:42PM 25 statements that the co-defendants made to law

01:42PM 1 enforcement about who fired what shots, if you had  
01:42PM 2 offered them in through the notes that the officers  
01:42PM 3 created or from the officers themselves, then is it safe  
01:42PM 4 to say the State probably would have sought the  
01:42PM 5 admission of the entirety of the officers' notes of  
01:42PM 6 those conversations with the co-defendants?

01:42PM 7 A. They very well could have.

01:42PM 8 Q. Probably under the Rule of Optional  
01:42PM 9 Completeness?

01:42PM 10 A. Yes.

01:42PM 11 Q. And they probably would have cross-examined the  
01:42PM 12 officers who interviewed the co-defendants, right?

01:42PM 13 A. I would think so.

01:42PM 14 Q. And at a minimum, as you pointed out, Mr. Shook  
01:43PM 15 would have brought out the inaccuracy between the  
01:43PM 16 various statements the co-defendants made?

01:43PM 17 A. Correct.

01:43PM 18 Q. Might have elicited other harmful information  
01:43PM 19 to your client, wouldn't he?

01:43PM 20 A. Yes. If it was there, I'm sure he would have.

01:43PM 21 Q. Exactly. Instead of calling these officers and  
01:43PM 22 trying to put on their notes, Mr. King still got the  
01:43PM 23 content of those statements before the jury. Do you  
01:43PM 24 remember this?

01:43PM 25 A. Specifically right now, no. You might be able



01:43PM 1 to refresh my memory.

01:43PM 2 Q. Didn't Mr. King repeatedly inject those  
01:43PM 3 statements into the very questions he was asking the  
01:43PM 4 witnesses?

01:43PM 5 A. I don't remember.

01:43PM 6 THE COURT: We can move on.

01:43PM 7 MS. SMITH: Okay.

01:43PM 8 Q. (By Ms. Smith) You've been asked a little bit  
01:43PM 9 about the foot wound evidence, about whether or not you  
01:43PM 10 were able to get in the medical records related to the  
01:44PM 11 wound on Mr. Halprin's foot.

01:44PM 12 A. Correct.

01:44PM 13 Q. Do you remember Mr. King offering medical  
01:44PM 14 documents, medical records related to that wound into  
01:44PM 15 evidence?

01:44PM 16 A. I remember me offering them into evidence or at  
01:44PM 17 least trying to offer them in evidence and objections  
01:44PM 18 being made by the State. Once again, it's one of those  
01:44PM 19 where it didn't come in but they got the point. Whether  
01:44PM 20 Mr. King actually got them in evidence later on, I don't  
01:44PM 21 remember.

01:44PM 22 Q. That's correct. He got them in later on. So  
01:44PM 23 they did come into evidence, didn't they?

01:44PM 24 A. I don't recall but if you say so.

01:44PM 25 Q. All right. Well, he also brought out the fact

01:44PM 1 that he was shot through the toes rather than from above  
01:44PM 2 through his cross-examination of Detective Spivey,  
01:44PM 3 didn't he? Do you remember that?

01:44PM 4 A. I don't.

01:44PM 5 Q. Do you remember the D. A. conceding at closing  
01:45PM 6 argument, "Okay. Halprin didn't shoot himself in the  
01:45PM 7 foot. He got shot in the crossfire"?

01:45PM 8 A. Actually no.

01:45PM 9 Q. Let's talk just a second about Janie Hawkins'  
01:45PM 10 testimony. Janie Hawkins was Officer Aubrey Hawkins'  
01:45PM 11 mother.

01:45PM 12 A. Correct.

01:45PM 13 Q. She testified at guilt.

01:45PM 14 A. Yes.

01:45PM 15 Q. The State didn't put her on at punishment, did  
01:45PM 16 they?

01:45PM 17 A. I don't believe so. I think she testified,  
01:45PM 18 maybe the official victim impact testimony after the  
01:45PM 19 verdict.

01:45PM 20 Q. She's a pretty memorable witness, isn't she?

01:45PM 21 A. Yes.

01:45PM 22 Q. Are you familiar with the practice in the  
01:45PM 23 D. A.'s office of offering victims, family members as  
01:45PM 24 witnesses at guilt and then not re-offering them at  
01:45PM 25 punishment for victim impact if they can get a little

01:45PM 1 bit out at guilt?

01:45PM 2 A. I can't say that I am aware of that as a  
01:46PM 3 strategy of the D. A.'s office, no.

01:46PM 4 Q. Do you remember Mr. King filing a motion in  
01:46PM 5 limine to keep out any improper victim impact testimony  
01:46PM 6 through Ms. Hawkins?

01:46PM 7 A. No, I don't.

01:46PM 8 Q. You don't remember the Court granting that  
01:46PM 9 motion?

01:46PM 10 A. No.

01:46PM 11 Q. Do you remember what testimony -- the nature of  
01:46PM 12 the testimony that she gave, though?

01:46PM 13 A. Standard type of stuff, her son was a good son.

01:46PM 14 Q. Did she testify to that?

01:46PM 15 A. Well, I could be confusing guilt-innocence with  
01:46PM 16 victim impact but, you know, it's all the same. It was  
01:46PM 17 Christmas. They were expecting to have dinner. It all  
01:46PM 18 blurred together, the kind of thing that everybody in  
01:46PM 19 the nation knew, the basic facts.

01:46PM 20 The robbery wasn't being contested by  
01:46PM 21 anybody. This was the grieving mother. She wanted to  
01:47PM 22 say what she wanted to say. We could have objected,  
01:47PM 23 tried to cut her off. It might have created an  
01:47PM 24 impression of us being gruff or obstructionists or not  
01:47PM 25 very good guys in front of the jury. And so we let her

01:47PM 1 go. Strategic decision.

01:47PM 2 Q. When you think of victim impact evidence what  
01:47PM 3 type of evidence is it that you think I'm talking about?

01:47PM 4 A. The close of testimony after verdict, family  
01:47PM 5 members making their point specifically to the defendant  
01:47PM 6 as to --

01:47PM 7 THE COURT: Excuse me. There was clearly a  
01:47PM 8 narrative that she gave of the events during the trial  
01:48PM 9 before the jury, the event that occurred, he responded  
01:48PM 10 to the call, leading up to him offering to show her how  
01:48PM 11 to get back to the highway if I recall but it's this  
01:48PM 12 Court's opinion that these attorneys, Mr. King and Mr.  
01:48PM 13 Ashford, would have considered a life sentence a win,  
01:48PM 14 that they were focusing from the very moment they  
01:48PM 15 started this trial on avoiding the death penalty and  
01:48PM 16 were not really expecting a not guilty.

01:48PM 17 So I'm not concerned that they didn't  
01:48PM 18 object to questions asked of the decedent's mother  
01:48PM 19 during the guilt-innocence portion. Is that helpful and  
01:48PM 20 can we move on?

01:48PM 21 MS. SMITH: If I could get Mr. Ashford to  
01:49PM 22 confirm the accuracy of what you just stated.

01:49PM 23 Q. (By Ms. Smith) He's basically said that your  
01:49PM 24 real goal here was not to get an acquittal but a life  
01:49PM 25 sentence. Is that accurate?

01:49PM 1 A. One hundred percent accurate.

01:49PM 2 MS. SMITH: I'm okay with that.

01:49PM 3 Q. (By Ms. Smith) I have two very brief areas to  
01:49PM 4 cover and I'm going to talk to you a little bit about  
01:49PM 5 the appeal process. There were a couple of issues  
01:49PM 6 raised about the jury instructions and your involvement  
01:49PM 7 in requesting certain instructions, in particular a  
01:49PM 8 felony murder instruction.

01:49PM 9 And I believe you have answered your  
01:49PM 10 interrogatories that you didn't think you were entitled  
01:49PM 11 to felony murder; is that correct?

01:49PM 12 A. I didn't think it applied under the  
01:49PM 13 circumstances. Everybody was in agreement that this was  
01:49PM 14 an aggravated robbery that all participants were  
01:49PM 15 voluntary -- all defendants were voluntarily  
01:49PM 16 participating in.

01:49PM 17 Q. Your theory was he never shot anybody, never  
01:49PM 18 hurt anybody, right?

01:50PM 19 A. Other than potentially himself.

01:50PM 20 Q. Your argument was if he is guilty of anything,  
01:50PM 21 it's just a robbery, right?

01:50PM 22 A. Correct.

01:50PM 23 Q. You didn't really want an instruction that said  
01:50PM 24 he was guilty of murder, did you?

01:50PM 25 A. No.

01:50PM 1 Q. You spoke early on direct about why you may or  
01:50PM 2 may not have objected to any arguments that the  
01:50PM 3 prosecutor made about the anticipation special issues.  
01:50PM 4 Do you recall that testimony?

01:50PM 5 A. Yes.

01:50PM 6 Q. I think you indicated earlier you got a little  
01:50PM 7 confused about whether they were talking about the guilt  
01:50PM 8 issue which is should he have anticipated and the  
01:50PM 9 punishment issue which is did he anticipate.

01:50PM 10 A. Correct.

01:50PM 11 Q. You got that straightened out now?

01:50PM 12 A. Yes.

01:50PM 13 Q. Do you recall Mr. King actually arguing to the  
01:50PM 14 jury that they had to believe to a certainty that Mr.  
01:51PM 15 Halprin had anticipated Mr. Hawkins' death?

01:51PM 16 A. I don't recall that but if he did, he did.

01:51PM 17 Q. Would you be surprised Mr. Shook didn't object  
01:51PM 18 to that misstatement of the law?

01:51PM 19 A. I wouldn't be surprised because, you know,  
01:51PM 20 argument is another area where it's often ripe for  
01:51PM 21 objection but you don't make it unless it's really  
01:51PM 22 something critical. And there are -- you know, it's a  
01:51PM 23 strategy whether you want to object during argument or  
01:51PM 24 not.

01:51PM 25 It depends on how clearly blatant the

01:51PM 1 prosecution's comment is or whatever. I don't remember  
01:51PM 2 at the time what our thoughts might have been but you  
01:51PM 3 don't always object in argument is what I believe.

01:52PM 4 Q. To your knowledge Mr. Shook didn't correct that  
01:52PM 5 misstatement of the law, did he?

01:52PM 6 A. I'm just saying in general we might not have  
01:52PM 7 objected to some things that were objectionable and he  
01:52PM 8 might not have objected to some things that were  
01:52PM 9 objectionable also.

01:52PM 10 Q. If Mr. King argued to the jury that they had to  
01:52PM 11 find by a certainty that Mr. Halprin had anticipated  
01:52PM 12 Officer Hawkins' death and they went back there without  
01:52PM 13 that being corrected, that put the State to a higher  
01:52PM 14 burden of proof if the jury remembered that and believed  
01:52PM 15 that; isn't that true?

01:52PM 16 A. Yes.

01:52PM 17 Q. You didn't object but you actually accomplished  
01:52PM 18 something better than that, didn't you?

01:52PM 19 A. Well, I mean I'm sure I might have not said it  
01:52PM 20 specifically but I'm sure I argued that, you know, Mr.  
01:52PM 21 Halprin wasn't out there intending to kill that officer.  
01:52PM 22 Nobody even knew that officer was going to show up. I'm  
01:52PM 23 arguing that. I may not be saying those words  
01:52PM 24 specifically in terms of anticipation but that's what  
01:53PM 25 I'm saying.

01:53PM 1 Q. I want to move into the appeal ineffectiveness  
01:53PM 2 claims with you. When you were assigned to this appeal  
01:53PM 3 you were approved to do death penalty appellate work,  
01:53PM 4 weren't you?

01:53PM 5 A. Yes.

01:53PM 6 Q. Mr. Halprin wasn't opposed to you handling his  
01:53PM 7 appeal.

01:53PM 8 A. No.

01:53PM 9 Q. Mr. Muhammed who has been mentioned in here  
01:53PM 10 already, Michael Muhammed, what is your opinion of him  
01:53PM 11 as an appellate defense lawyer?

01:53PM 12 A. Very, very pleased with the work that Mr.  
01:53PM 13 Muhammed had done for me in the past. Mr. Muhammed and  
01:53PM 14 his wife who is a public defender in Dallas County,  
01:53PM 15 Pamela Muhammed, both went to SMU together, both  
01:53PM 16 graduated at the same time, both clerked for me when  
01:53PM 17 they were in law school.

01:53PM 18 I believe Mrs. Muhammed's first job out of  
01:53PM 19 SMU was working for some capital defense project in  
01:54PM 20 Huntsville where they actually wrote death penalty  
01:54PM 21 appeals and Mr. Muhammed worked with her on a bunch of  
01:54PM 22 those.

01:54PM 23 Mr. Muhammed is very bright. Mr. Muhammed  
01:54PM 24 had done a bunch of appeals for me and actually had  
01:54PM 25 gotten several reversals which is not all that common in



01:54PM 1 the Fifth District of Dallas. Mr. Muhammed discussed  
01:54PM 2 with me prior to beginning on Halprin that he read a lot  
01:54PM 3 of other death penalty briefs written by defense lawyers  
01:54PM 4 which showed me he was preparing and trying to get a  
01:54PM 5 background to start this brief.

01:55PM 6 And then he told me that he thought that a  
01:55PM 7 lot of the constitutional issues raised over and over  
01:55PM 8 and denied over and over were a waste of time, that he  
01:55PM 9 wanted to concentrate on a lot of other issues. He had  
01:55PM 10 been pretty good in the past.

01:55PM 11 We had records that anybody else might have  
01:55PM 12 filed an Anders brief. He would always tell me, "No. I  
01:55PM 13 want to find an issue for this guy." He would raise an  
01:55PM 14 issue. I had a lot of confidence in him. I just think  
01:55PM 15 that the Court of Appeals did not allow him time to do  
01:55PM 16 the brief that he would like to have done.

01:55PM 17 Q. The Court of Criminal Appeals, they knew Mr.  
01:55PM 18 Muhammed was working -- that he himself, as well as you,  
01:55PM 19 were counsel on the direct appeal, didn't they?

01:55PM 20 A. Yes. Usually -- not usually. He would always  
01:55PM 21 list himself as of counsel.

01:55PM 22 Q. He filed a notice of appearance in the Court of  
01:56PM 23 Criminal Appeals, didn't he?

01:56PM 24 A. He did.

01:56PM 25 Q. The Court of Criminal Appeals had no problem

01:56PM 1 with Michael Muhammed working on this direct appeal, did  
01:56PM 2 they?

01:56PM 3 A. As far as I know.

01:56PM 4 Q. While he did the writing you were involved in  
01:56PM 5 discussing the issues that he would raise --

01:56PM 6 A. Yes.

01:56PM 7 Q. -- in that appeal? And you discussed those  
01:56PM 8 beforehand, before he wrote it, didn't you?

01:56PM 9 A. Yes. Number one issue being the fact that in a  
01:56PM 10 death penalty case any evidence that tends to show  
01:56PM 11 mitigating factors, any evidence that goes to mitigation  
01:56PM 12 should be widely considered for admission despite it  
01:56PM 13 might not meet all of the requirements to get in through  
01:56PM 14 the Rules of Evidence.

01:56PM 15 Q. You certainly considered more claims than what  
01:56PM 16 was ultimately filed in the CCA, didn't you?

01:57PM 17 A. Definitely. Like I say, he just didn't get a  
01:57PM 18 chance to complete the brief as he would liked to have  
01:57PM 19 done it. He started with what comes first which is jury  
01:57PM 20 selection and --

01:57PM 21 Q. I'm sorry.

01:57PM 22 A. -- he just didn't get to finish.

01:57PM 23 Q. Didn't you decide together which claims would  
01:57PM 24 be the strongest and didn't you reject some claims? In  
01:57PM 25 other words, he didn't just run out of time. You

01:57PM 1 considered a lot of claims. You didn't file all of  
01:57PM 2 them. You chose the strongest.

01:57PM 3 A. I don't remember a lot of specifics. I  
01:57PM 4 remember him coming to me with a lot of points that he  
01:57PM 5 thought, you know, were the strongest and that he was  
01:57PM 6 going to try to put forward. And ultimately I don't  
01:58PM 7 know if those are the ones that, you know, that he did  
01:58PM 8 other than jury selection or those are the ones that he  
01:58PM 9 didn't get a chance to do.

01:58PM 10 Q. Do you recall him filing 19 points of error in  
01:58PM 11 the direct appeal?

01:58PM 12 A. I don't.

01:58PM 13 Q. In addition to discussing with Mr. Muhammed the  
01:58PM 14 claims that would be raised, didn't you present oral  
01:58PM 15 argument on the brief in the Court of Criminal Appeals?

01:58PM 16 A. No.

01:58PM 17 Q. Did Mr. Muhammed argue it?

01:58PM 18 A. I think he did.

01:58PM 19 Q. Mr. Muhammed timely filed every pleading  
01:58PM 20 including extension motions, the brief and the motion  
01:58PM 21 for rehearing, didn't he?

01:58PM 22 A. Yes.

01:58PM 23 Q. I don't know if you remember this. CCA gave  
01:58PM 24 you a total of about five and a half months to file the  
01:58PM 25 direct appeal brief. Does that sound familiar?

01:59PM 1 A. Yes.

01:59PM 2 Q. Are you aware that standard practice is about  
01:59PM 3 six months?

01:59PM 4 A. No, I'm not.

01:59PM 5 Q. So they might have cut you off maybe by a  
01:59PM 6 couple of weeks. Is that your recollection?

01:59PM 7 A. I had never done a death penalty appeal, relied  
01:59PM 8 heavily on Mr. Muhammed. So I didn't know but I just  
01:59PM 9 know that he just kept telling me they weren't giving  
01:59PM 10 him time to do what he wanted to do.

01:59PM 11 Q. I think you mentioned this earlier but Mr.  
01:59PM 12 Muhammed filed an amended brief in the Court of Criminal  
01:59PM 13 Appeals, didn't he?

01:59PM 14 A. Yes.

01:59PM 15 Q. In that brief he raised the remaining claims  
01:59PM 16 that he had run out of time initially on, didn't he?

01:59PM 17 A. Yes.

01:59PM 18 Q. There were four more points of error that he  
01:59PM 19 filed, correct?

01:59PM 20 A. I don't remember how many there were but I know  
01:59PM 21 he did file additional points of error.

01:59PM 22 Q. Do you know whether along with that amended  
02:00PM 23 brief he filed a motion for leave to file the amended  
02:00PM 24 brief?

02:00PM 25 A. Yes.

02:00PM 1 Q. Are you aware under the Rules of Appellate  
02:00PM 2 Procedure you can file an amended brief in the Court of  
02:00PM 3 Appeals?

02:00PM 4 A. Yes.

02:00PM 5 Q. And that the rule allows it whether justice  
02:00PM 6 requires, quote, unquote. Are you familiar with that  
02:00PM 7 phrase?

02:00PM 8 A. Not particularly, no.

02:00PM 9 Q. The Court of Criminal Appeals refused to accept  
02:00PM 10 the amended brief in the end, didn't they?

02:00PM 11 A. Yes.

02:00PM 12 Q. They did so after having the claims before them  
02:00PM 13 and reviewing them, didn't they?

02:00PM 14 A. I believe so.

02:00PM 15 Q. So they had a chance to look at those claims  
02:00PM 16 and they decided, didn't they, that justice didn't  
02:00PM 17 require disposition of them on the direct, didn't they?

02:00PM 18 A. On a death penalty case -- sounds kind of  
02:00PM 19 ridiculous but, yes, I guess that's what they decided.

02:00PM 20 Q. By making the ruling they basically said they  
02:00PM 21 didn't think those points of error had any merit.

02:00PM 22 A. I guess.

02:00PM 23 Q. Mr. Muhammed filed a motion for rehearing  
02:01PM 24 without an extension, didn't he?

02:01PM 25 A. I don't remember but my recollection is that he

02:01PM 1 filed everything that he could have filed timely.

02:01PM 2 Q. He definitely raised that ranking document  
02:01PM 3 issue, didn't he?

02:01PM 4 A. Yes.

02:01PM 5 Q. That to you was basically the most important  
02:01PM 6 issue on the direct appeal, wasn't it?

02:01PM 7 A. I believe that it was, yes.

02:01PM 8 Q. The Court of Criminal Appeals found it  
02:01PM 9 harmless, didn't they?

02:01PM 10 A. They did.

02:01PM 11 Q. Before you and Mr. Muhammed filed the brief on  
02:01PM 12 direct appeal did writ counsel, Mr. Udashen or Mr.  
02:01PM 13 Anton, contact you to discuss what issues they thought  
02:01PM 14 should be raised on the direct appeal?

02:01PM 15 A. Not that I am aware.

02:01PM 16 Q. Would you have entertained their ideas or  
02:01PM 17 suggestions for the direct appeal?

02:01PM 18 A. Sure.

02:01PM 19 Q. Do you recall about a month after you filed  
02:01PM 20 your brief writ counsel contacted the State, myself and  
02:02PM 21 Ms. Ardolf and said they were going to go to Judge  
02:02PM 22 Cunningham who was the judge of this court and ask to  
02:02PM 23 remove you from the direct appeal?

02:02PM 24 A. Yes.

02:02PM 25 Q. Did they call you or complain to you or Mr.

02:02PM 1 Muhammed personally about the brief?

02:02PM 2 A. No.

02:02PM 3 Q. You found out about this from the State, didn't  
02:02PM 4 you?

02:02PM 5 A. Yes.

02:02PM 6 THE COURT: Can you spell Ardolf, please?

02:02PM 7 MS. SMITH: A R D O L F, Tammy.

02:02PM 8 Q. (By Ms. Smith) After writ counsel complained  
02:02PM 9 about your brief Mr. Muhammed filed the amended brief  
02:02PM 10 after that?

02:02PM 11 A. I don't recall but maybe so.

02:02PM 12 Q. Mr. Muhammed didn't file that amended brief  
02:02PM 13 just because writ counsel complained about the quality  
02:02PM 14 of the brief that had been filed, did he?

02:02PM 15 A. No. He had always intended on presenting more  
02:02PM 16 issues but he was forced to file what he had at the  
02:03PM 17 deadline that they gave him.

02:03PM 18 Q. In that interim from the time he filed the  
02:03PM 19 brief to the time he filed the amended brief did they  
02:03PM 20 ever contact you or Mr. Muhammed and ask you to add an  
02:03PM 21 additional point of error of their suggestion?

02:03PM 22 A. No.

02:03PM 23 Q. How about on the motion for rehearing? Did  
02:03PM 24 they call you and contact you about suggestions or  
02:03PM 25 ideas?

02:03PM 1 A. No.

02:03PM 2 Q. Do you know if they actually did go to Judge  
02:03PM 3 Cunningham and try to get you removed from the appeal?

02:03PM 4 A. I remember being pretty hot about it and going  
02:03PM 5 and talking to Judge Cunningham about it and I think he  
02:03PM 6 said he didn't know what I was talking about but I don't  
02:03PM 7 know.

02:03PM 8 Q. Were you aware that the State had asked Mr.  
02:03PM 9 Udashen and Mr. Anton to let the State know if they were  
02:03PM 10 going to have such meeting and to include both the State  
02:03PM 11 and yourself?

02:03PM 12 A. You might have told me. Otherwise I didn't  
02:04PM 13 know.

02:04PM 14 Q. To your knowledge there was never any such  
02:04PM 15 meeting, was there?

02:04PM 16 A. No.

02:04PM 17 Q. You certainly weren't there for any such  
02:04PM 18 meeting, were you?

02:04PM 19 A. No.

02:04PM 20 Q. The Judge never removed you, did he?

02:04PM 21 A. No.

02:04PM 22 Q. He thought you did a good job.

02:04PM 23 A. I assume so.

02:04PM 24 Q. Since this writ has been filed you have  
02:04PM 25 complied with all the orders of the Court, haven't you?



02:04PM 1 A. Yes.

02:04PM 2 Q. You have turned your files over to the Court,  
02:04PM 3 correct?

02:04PM 4 A. Yes.

02:04PM 5 Q. You were given a release executed by Mr.  
02:04PM 6 Halprin saying, "You can release my files to writ  
02:04PM 7 counsel," weren't you?

02:04PM 8 A. Yes.

02:04PM 9 Q. Did writ counsel contact you for the files  
02:04PM 10 after you got that release?

02:04PM 11 A. No. I got that letter with the release, looked  
02:04PM 12 at it, sat it on my desk, said, "Okay. I'll get to it."  
02:04PM 13 Pretty much forgot about it and then, you know, got  
02:05PM 14 calls from you or the Court or somebody saying that, you  
02:05PM 15 know, I never turned over my file, that I was trying to  
02:05PM 16 hide my file. And nobody had ever just picked up the  
02:05PM 17 phone and said, "Hey, bring me the file."

02:05PM 18 Q. In fact you actually not sent them to storage  
02:05PM 19 because you anticipated turning them over, didn't you?

02:05PM 20 A. Yes.

02:05PM 21 THE COURT: Someone tell you that they  
02:05PM 22 thought you were trying to hide your file?

02:05PM 23 THE WITNESS: Yeah.

02:05PM 24 THE COURT: Did I tell you that?

02:05PM 25 THE WITNESS: I think you did.

02:05PM 1 Q. (By Ms. Smith) It's not true, is it?

02:05PM 2 A. No.

02:05PM 3 Q. You would have been happy to turn over the  
02:05PM 4 files before now, wouldn't you?

02:05PM 5 A. Sure.

02:05PM 6 Q. Mr. Muhammed, he's been cooperative as well?

02:05PM 7 A. Yes.

02:05PM 8 Q. He's turned over his appellate files to the  
02:05PM 9 Court, right?

02:05PM 10 A. I believe so.

02:05PM 11 Q. He timely filed his answers to the defense  
02:05PM 12 interrogatories, didn't he?

02:05PM 13 A. I believe so.

02:05PM 14 Q. You're not saying you couldn't have raised more  
02:05PM 15 claims on the direct appeal, are you?

02:06PM 16 A. No.

02:06PM 17 Q. You started out with more than 19 probably,  
02:06PM 18 didn't you?

02:06PM 19 A. I believe so.

02:06PM 20 Q. Between the two of you you whittled it down; is  
02:06PM 21 that accurate?

02:06PM 22 A. Primarily Mr. Muhammed -- you know, we engaged  
02:06PM 23 in discussion after the trial. As best I could  
02:06PM 24 recollect at the time, I went over everything that I  
02:06PM 25 thought should be raised. I had better, sharper

02:06PM 1 recollection at that point in time about some of the  
02:06PM 2 jurors and some of the issues at jury selection.

02:06PM 3           There was the issue of the ranking  
02:06PM 4 document. I gave him some of the research I had done as  
02:06PM 5 to letting mitigation evidence in, even if it was  
02:06PM 6 hearsay or whatever. As he was writing he was  
02:07PM 7 discussing issues with me.

02:07PM 8           I don't know what we weeded out or did not  
02:07PM 9 weed out. That was pretty much up to him. I trusted  
02:07PM 10 him on that but he did tell me, you know, "Well, I could  
02:07PM 11 raise them but I'm not going to raise that. I'm going  
02:07PM 12 to try to do something different." Specifics I don't  
02:07PM 13 remember.

02:07PM 14           Q. Raising more claims isn't necessarily better,  
02:07PM 15 is it?

02:07PM 16           A. No. That's pretty much the whole point he was  
02:07PM 17 making to me. "There are things that have been raised  
02:07PM 18 for years and years, day in, day out by top respected  
02:07PM 19 appellate attorneys and they're denied over and over and  
02:07PM 20 over and I want to try to do something different."

02:07PM 21           Q. Is there any such thing as a case with 20, 30,  
02:07PM 22 40 points of reversible error, not just error but  
02:08PM 23 reversible?

02:08PM 24           A. I think realistically when you go to seminars  
02:08PM 25 what they will tell you is put your strongest stuff

02:08PM 1 there because the Court is not going to go through that  
02:08PM 2 many issues, you know, on a capital case. How much is  
02:08PM 3 too many? I don't know but there's certainly something  
02:08PM 4 that would go to -- it's not going to benefit you just  
02:08PM 5 to raise more and more issues as long as you raise your  
02:08PM 6 strongest issues.

02:08PM 7 Q. And when an allegation is made that you are  
02:08PM 8 ineffective on appeal isn't it really the ultimate test  
02:08PM 9 whether the claim you fail to raise would be reversible  
02:08PM 10 error?

02:08PM 11 A. Yes.

02:08PM 12 Q. Do you think you failed to raise a claim of  
02:08PM 13 reversible error?

02:09PM 14 A. No.

02:09PM 15 Q. Certainly this Court has before it the very  
02:09PM 16 claims that writ counsel claims you should have raised  
02:09PM 17 and didn't. So the Court can look at those claims and  
02:09PM 18 make that evaluation, can't it?

02:09PM 19 A. Yes.

02:09PM 20 Q. The CCA will ultimately do the same thing,  
02:09PM 21 won't it?

02:09PM 22 A. Yes.

02:09PM 23 Q. Thank you, Mr. Ashford.

02:09PM 24 MS. SMITH: Pass the witness.

02:09PM 25

REDIRECT EXAMINATION

02:09PM 1

02:09PM 2 BY MR. ANTON:

02:09PM 3 Q. Mr. Ashford, there's several areas that I think  
02:09PM 4 I need clarification. I don't want to be redundant.  
02:09PM 5 Let's talk, first of all, about extraneous offenses.  
02:09PM 6 When you were being cross-examined before lunch the  
02:09PM 7 State alluded to a number of other extraneous matters  
02:09PM 8 that they could have brought in punishment had you put  
02:09PM 9 on a more vigorous punishment presentation, I guess, and  
02:09PM 10 the State chose not to. Is that what you understood it  
02:09PM 11 to be?

02:09PM 12 A. Her question to be?

02:09PM 13 Q. Yes.

02:09PM 14 A. Yes.

02:09PM 15 Q. Now, I assume -- I guess that you would have  
02:09PM 16 already knew about all of the extraneous offenses from  
02:10PM 17 the notice that you would have filed, right?

02:10PM 18 A. It's hard to say because I don't recall  
02:10PM 19 specifically what responses they gave us to the  
02:10PM 20 extraneous at this time.

02:10PM 21 Q. I'm trying to understand. Was there some issue  
02:10PM 22 that the State could have brought up an extraneous  
02:10PM 23 offense on that they chose not to if you had put on the  
02:10PM 24 hearsay in mitigation? Was there something out there  
02:10PM 25 that they could only do it if you had gotten in some

02:10PM 1 more details from Kelly Goodness?

02:10PM 2 A. No.

02:10PM 3 Q. Anything that they wanted to use, is it your  
02:10PM 4 understanding they could have used it anyway?

02:10PM 5 A. Yes.

02:10PM 6 Q. So basically at the punishment phase they had  
02:10PM 7 other bullets they could have shot but they chose not to  
02:11PM 8 shoot them?

02:11PM 9 A. I was answering her question in general. I  
02:11PM 10 don't specifically remember if there was anything else  
02:11PM 11 that they had that they could have used, wanted to use,  
02:11PM 12 held back on or whatever.

02:11PM 13 Q. If -- apparently if they had additional  
02:11PM 14 extraneous matters in punishment they could have brought  
02:11PM 15 up, I guess for strategic reasons they decided they  
02:11PM 16 didn't need them to get the verdict they wanted; is that  
02:11PM 17 fair?

02:11PM 18 A. That's fair.

02:11PM 19 Q. Let's go into mitigation and we have got Dr.  
02:11PM 20 Goodness' testimony. We can go through this in detail,  
02:11PM 21 I suppose, but in your mind is it the same if Dr.  
02:11PM 22 Goodness says Randy was abused as a child? Does that  
02:11PM 23 carry the same impact as her saying that there was an  
02:11PM 24 instant, for example, where he was -- he basically had  
02:12PM 25 his teeth knocked out in child abuse? Do you think that

02:12PM 1 carries the same impact to the jury?

02:12PM 2 A. No.

02:12PM 3 Q. Do you think it's the same thing to inform the  
02:12PM 4 jury in general terms that your parents are a drug user  
02:12PM 5 as opposed to details about them intravenously shooting  
02:12PM 6 drugs and being gone and leaving you without food when  
02:12PM 7 they're on drug binges?

02:12PM 8 A. No.

02:12PM 9 Q. The devil is in some of the details. You agree  
02:12PM 10 with that?

02:12PM 11 A. Yes.

02:12PM 12 Q. This is why I want to clarify and, you know,  
02:12PM 13 your opinion is your opinion but I just want to make  
02:12PM 14 sure, some are inconsistency. When we first talked you  
02:12PM 15 said yes, you thought the fact Dr. Goodness could not  
02:12PM 16 get into the details prejudiced her presentation. Do  
02:12PM 17 you remember that?

02:12PM 18 A. Yes.

02:12PM 19 Q. When the State asked you about it you said  
02:12PM 20 since they found out generally that he had ADHD and he  
02:12PM 21 had been abused and he had been adopted, that all of  
02:12PM 22 that came in anyway so it was all to the same effect --  
02:13PM 23 okay. Yes or no?

02:13PM 24 A. Yes.

02:13PM 25 Q. So bottom line, in your opinion which is it?

02:13PM 1 Was the truncated presentation by Dr. Goodness and her  
02:13PM 2 failure to get into the details prejudicial to the  
02:13PM 3 mitigation presentation?

02:13PM 4 A. I think that everything we wanted to get in  
02:13PM 5 came in but specific details in my opinion would have  
02:13PM 6 been better.

02:13PM 7 Q. As was pointed out, the jury deliberated a long  
02:13PM 8 time without those details.

02:13PM 9 A. Correct

02:13PM 10 Q. Had they had the details, do you think it would  
02:13PM 11 have made a difference, could have made a difference?

02:13PM 12 A. It potentially could have.

02:13PM 13 Q. Now then, is it your understanding of the law  
02:13PM 14 that when a person testifies it automatically puts their  
02:13PM 15 character and veracity in issue such that anything can  
02:13PM 16 be used for impeachment?

02:13PM 17 A. No.

02:13PM 18 Q. If a person testifies, then there are  
02:14PM 19 impeachment matters that are governed by the Rules of  
02:14PM 20 Evidence; is that right?

02:14PM 21 A. That's correct.

02:14PM 22 Q. Does that to your understanding include prior  
02:14PM 23 statements and in letters and news interviews without  
02:14PM 24 more?

02:14PM 25 A. No.



02:14PM 1 Q. Now then -- the bottom line -- this was Mr.  
02:14PM 2 King's witness and he made those decisions because that  
02:14PM 3 was his witness, correct?

02:14PM 4 A. Correct.

02:14PM 5 Q. The discussion was also -- was there any  
02:14PM 6 discussion between you all in preparation for putting  
02:14PM 7 Randy on the stand about the nature of impeachment?

02:14PM 8 A. I don't believe there was any preparation  
02:14PM 9 before putting Randy on the stand. I do believe that  
02:14PM 10 whether I'm whispering to him during the actual  
02:14PM 11 cross-examination or on a break or something I'm, you  
02:14PM 12 know -- I might have mentioned to him -- I think I  
02:15PM 13 mentioned to him that this is improper impeachment but I  
02:15PM 14 can't say a hundred percent.

02:15PM 15 Q. Well, I think per the Judge's -- whatever  
02:15PM 16 strategic decision was made to object or not object at  
02:15PM 17 that time, that was Mr. King's?

02:15PM 18 A. Yes.

02:15PM 19 Q. Now then, in your presentation, the defense  
02:15PM 20 presentation of the case, five of the other  
02:15PM 21 co-defendants -- five of the other escapees' statements  
02:15PM 22 were introduced by you, by the defense team ultimately;  
02:15PM 23 is that right?

02:15PM 24 A. I forgot that we even did it but based on what  
02:15PM 25 y'all are telling me, yes.

02:15PM 1 Q. Now, you expressed some concerns that these  
02:15PM 2 people weren't credible, that most of society would  
02:16PM 3 abhor them and that may have played a role in your  
02:16PM 4 decision about what evidence to present or not present,  
02:16PM 5 correct?

02:16PM 6 A. Correct. Definitely as far as calling them  
02:16PM 7 directly.

02:16PM 8 Q. If the decision is made to introduce their  
02:16PM 9 confessions, warts and all, as part of your case, what  
02:16PM 10 was the difference strategically between that and the  
02:16PM 11 decision to introduce the oral statements they made to  
02:16PM 12 investigators such as Spivey?

02:16PM 13 A. I can't tell you because I don't remember what  
02:16PM 14 our discussions were or were not as to the oral  
02:16PM 15 statements.

02:16PM 16 Q. Okay. Do you know if there was a strategic  
02:16PM 17 decision made about that?

02:16PM 18 A. No.

02:16PM 19 Q. Now then, certainly in final argument when  
02:17PM 20 there are misstatements made strategy decision is you're  
02:17PM 21 not going to object to any old thing but important  
02:17PM 22 issues, correct?

02:17PM 23 A. Correct.

02:17PM 24 Q. Given that the anticipation is directly in the  
02:17PM 25 second issue, one of the things the jury must decide,

02:17PM 1 would you agree that that because it's a charge issue is  
02:17PM 2 a crucial issue?

02:17PM 3 A. Yes.

02:17PM 4 Q. So if there was a misstatement of the law  
02:17PM 5 directly related to the burden of proof in terms of  
02:17PM 6 anticipation, in your mind is that the kind of argument  
02:17PM 7 that would merit an objection?

02:17PM 8 A. Yes.

02:17PM 9 Q. Would there be a strategic reason not to object  
02:17PM 10 to a misstatement of the burden of proof on one of the  
02:17PM 11 charge issues?

02:17PM 12 A. In general, in looking at the flow of the  
02:18PM 13 argument, how the jury is paying attention to it, what  
02:18PM 14 kind of reaction that you think you get from  
02:18PM 15 interrupting, whether you call something to the jury's  
02:18PM 16 attention, "Hey. That's important. We're objecting to  
02:18PM 17 it," so now they emphasize on it more, those can be  
02:18PM 18 strategic reasons not to object to something. Whether  
02:18PM 19 that was what we did in this case or not, I can't tell  
02:18PM 20 you.

02:18PM 21 Q. Okay. Now then, regarding the appeal, I think  
02:18PM 22 that you indicated that you thought that the Judge's  
02:18PM 23 decision to limit Dr. Goodness' presentation of the  
02:18PM 24 mitigation evidence was something that you thought  
02:18PM 25 should go in the appeal?

02:19PM 1 A. Correct.

02:19PM 2 Q. And you thought that was a solid issue?

02:19PM 3 A. Yes.

02:19PM 4 Q. And I believe that you also stated that you

02:19PM 5 told Mr. Muhammed at some point or there were

02:19PM 6 discussions you said, "This is one of the reasons that

02:19PM 7 should be raised"?

02:19PM 8 A. I just kept emphasizing the fact that anything

02:19PM 9 mitigating in a death penalty should come in regardless

02:19PM 10 of the Rules of Evidence. So whether I said that

02:19PM 11 specifically as to the excluded testimony from Dr.

02:19PM 12 Goodness or not, I don't remember. I just don't

02:19PM 13 remember.

02:19PM 14 Q. Well, in your opinion now that issue, just one

02:19PM 15 of the -- not one of the primary issues, something that

02:19PM 16 could have been raised in his discretion or something

02:19PM 17 that really should have gone in there?

02:19PM 18 A. Yeah, it should have gone in there.

02:20PM 19 Q. Finally -- if you don't know, you don't know.

02:20PM 20 Is it your understanding that if counsel files a

02:20PM 21 supplemental brief and the Court doesn't accept it, that

02:20PM 22 that issue is preserved for review so those issues

02:20PM 23 contained in the supplemental brief can be pursued in a

02:20PM 24 writ of certiori to the Supreme Court?

02:20PM 25 A. That I don't know.

02:20PM 1 MR. ANTON: I'm finished.

02:20PM 2 MR. UDASHEN: I have a few questions.

02:20PM 3 Q. (By Mr. Udashen) Mr. Ashford, when the State  
02:20PM 4 told you and Mr. King off the record that they didn't  
02:20PM 5 know who wrote the ranking document do you think they  
02:20PM 6 were telling you the truth?

02:20PM 7 MS. SMITH: Objection, Your Honor. This is  
02:20PM 8 going into a claim that is not before this hearing.  
02:20PM 9 It's a Brady allegation. It's not an ineffectiveness  
02:20PM 10 claim.

02:20PM 11 THE COURT: Sustained.

02:20PM 12 Q. (By Mr. Udashen) Now, do you agree with me that  
02:20PM 13 the State apparently went to great efforts to have this  
02:21PM 14 ranking document excluded from the evidence?

02:21PM 15 A. Yes.

02:21PM 16 THE COURT: Mr. Udashen, do you have  
02:21PM 17 anything new?

02:21PM 18 MR. UDASHEN: I do, Your Honor.

02:21PM 19 THE COURT: Let's get to the new stuff.

02:21PM 20 Q. (By Mr. Udashen) Your defense -- is it a fair  
02:21PM 21 statement that your defense is basically what is from a  
02:21PM 22 mitigation standpoint for the death penalty question is  
02:21PM 23 basically what was summarized in the ranking document?

02:21PM 24 A. Yes, that was part of it.

02:21PM 25 Q. What I mean by that is the argument you were

02:21PM 1 trying to make are the same things that the ranking  
02:21PM 2 document says?

02:21PM 3 A. Yes.

02:21PM 4 Q. You didn't have a law enforcement officer who  
02:21PM 5 testified to any of these facts that are in the ranking  
02:21PM 6 document?

02:21PM 7 A. Not that I recall.

02:21PM 8 Q. And so as the trial attorney do you feel like  
02:21PM 9 having a law enforcement officer testify in support of  
02:21PM 10 the facts you were presenting as far as mitigation of  
02:22PM 11 punishment would have been a significant factor for the  
02:22PM 12 jury?

02:22PM 13 A. I think so.

02:22PM 14 Q. Even though you made efforts to get the ranking  
02:22PM 15 document in front of the jury and the jury became aware  
02:22PM 16 that there was something out there, the fact is they  
02:22PM 17 didn't ever have this information that was in this  
02:22PM 18 document, correct?

02:22PM 19 A. Correct. There again is the pitfall. If I  
02:22PM 20 call the law enforcement officer that was responsible  
02:22PM 21 for that document, that he would then turn it around and  
02:22PM 22 try to explain it away like the affidavit that I just  
02:22PM 23 saw.

02:22PM 24 THE COURT: You didn't know who that was  
02:22PM 25 until after the trial, correct?

02:22PM 1 THE WITNESS: Correct.

02:22PM 2 THE COURT: So you couldn't have called him  
02:22PM 3 with the information you had leading up to and during  
02:22PM 4 the trial. You had no one to call because you didn't  
02:23PM 5 know who authored the document; is that correct?

02:23PM 6 THE WITNESS: That's correct.

02:23PM 7 MR. UDASHEN: Can I proceed, Your Honor?

02:23PM 8 Q. (By Mr. Udashen) Mr. Ashford, there was -- Ms.  
02:23PM 9 Smith asked you or showed you an affidavit from Sgt.  
02:23PM 10 Whitman where he says essentially that he wrote the  
02:23PM 11 ranking document but number five, six and seven, Garcia,  
02:23PM 12 Murphy and Halprin were really equal even though in the  
02:23PM 13 document he lists Halprin as seven. Do you recall  
02:23PM 14 seeing that?

02:23PM 15 A. Yes.

02:23PM 16 Q. Do you think that would have looked kind of  
02:23PM 17 silly in the jury for him to say that after having  
02:23PM 18 written the document?

02:23PM 19 A. Yes.

02:23PM 20 Q. So you think that would have been effective to  
02:23PM 21 the jury to say, "I know I said Halprin seven but that's  
02:23PM 22 not really what I meant"?

02:23PM 23 A. Without knowing that witness, I don't know. I  
02:23PM 24 mean --

02:23PM 25 THE COURT: Mr. Udashen, the purpose of

02:23PM 1 this hearing is to determine facts. And the reason why  
02:24PM 2 you and your counsel convinced me to have an evidentiary  
02:24PM 3 hearing was so I could see the witness testify and  
02:24PM 4 determine the credibility. He's testifying that --  
02:24PM 5 whether or not that mitigation document could have  
02:24PM 6 changed the outcome of the trial is my call, isn't it?

02:24PM 7 MR. UDASHEN: Yes, sir.

02:24PM 8 THE COURT: My recommendation to make and  
02:24PM 9 then ultimately the Court of Criminal Appeals' call.

02:24PM 10 MR. UDASHEN: That's right. I'm just  
02:24PM 11 responding to the cross-examination.

02:24PM 12 THE COURT: I understand. Can we move on?

02:24PM 13 MR. UDASHEN: Yes.

02:24PM 14 Q. (By Mr. Udashen) To your recollection of the  
02:24PM 15 evidence that was presented to the jury was there any  
02:24PM 16 evidence presented to the jury that ever said that Randy  
02:24PM 17 Halprin had a very submissive characteristic?

02:25PM 18 A. Specifically I can't say that I remember  
02:25PM 19 anything specifically but --

02:25PM 20 THE COURT: Excuse me. That can be  
02:25PM 21 developed from the record. That can be developed from  
02:25PM 22 the transcript. Ultimately the question that you have  
02:25PM 23 before us regarding Mr. Ashford is why he conducted the  
02:25PM 24 trial the way he conducted it, what were his strategic  
02:25PM 25 reasons for making the call, not what could have or



02:25PM 1 might have, should have happened if he had done it  
02:25PM 2 differently but why he made the calls he made.

02:25PM 3 Mr. Ashford, you told me -- you said in  
02:25PM 4 fact when you first met with Mr. Muhammed on preparing  
02:25PM 5 for the appeal that the primary issue you raised and had  
02:25PM 6 actually begun researching was the mitigation issue.

02:25PM 7 THE WITNESS: That's correct.

02:25PM 8 THE COURT: And the Court not allowing  
02:26PM 9 evidence in, whether it was hearsay or for some other  
02:26PM 10 reason inadmissible. You had some law done, some  
02:26PM 11 research that had shown the Court should have exercised  
02:26PM 12 more leeway in allowing mitigation evidence.

02:26PM 13 THE WITNESS: That's correct.

02:26PM 14 THE COURT: The mitigation evidence I  
02:26PM 15 suspect you're referring to -- tell me if I am wrong --  
02:26PM 16 is the ranking document.

02:26PM 17 THE WITNESS: Correct.

02:26PM 18 THE COURT: The basis for Dr. Goodness'  
02:26PM 19 opinions.

02:26PM 20 THE WITNESS: Correct.

02:26PM 21 THE COURT: The school records.

02:26PM 22 THE WITNESS: Correct.

02:26PM 23 THE COURT: The adoption records.

02:26PM 24 THE WITNESS: Correct.

02:26PM 25 THE COURT: And the question is -- the

02:26PM 1 question for this Court is why you weren't prepared to  
02:26PM 2 get that evidence admitted. That's question number one.

02:26PM 3 Question number two is why when the State  
02:27PM 4 told you they had no idea where this ranking document  
02:27PM 5 came from you didn't ask for a continuance so you could  
02:27PM 6 investigate it.

02:27PM 7 THE WITNESS: Realistically we thought the  
02:27PM 8 State knew where it came from all along and that, you  
02:27PM 9 know, we were just being sandbagged. And I mean we  
02:27PM 10 could have asked for a continuance but it would have  
02:27PM 11 disrupted the trial and we really didn't have any  
02:27PM 12 realistic area to point to, go to, to say, "We'll go ask  
02:27PM 13 this person, ask this person, ask this person." We  
02:27PM 14 hired S. O. Woods. We did some other things. We didn't  
02:27PM 15 know where to go.

02:27PM 16 THE COURT: You have read four transcripts  
02:27PM 17 of trials on the same set of facts conducted by Judge  
02:27PM 18 Cunningham. Do you think he would have given you a  
02:27PM 19 mistrial -- I mean given you a continuation?

02:28PM 20 THE WITNESS: No.

02:28PM 21 THE COURT: Do we have any more facts that  
02:28PM 22 we need to determine from this witness that can't be  
02:28PM 23 otherwise ascertained from the record or other documents  
02:28PM 24 or files?

02:28PM 25 MR. UDASHEN: No, sir.

02:28PM 1 THE COURT: Does the State?

02:28PM 2 MS. SMITH: No, Your Honor.

02:28PM 3 THE COURT: You may step down.

02:28PM 4 (The witness left the courtroom.)

02:28PM 5 THE COURT: Call your next witness

02:41PM 6 (A brief recess was taken.)

02:41PM 7 THE COURT: The defense has called Edwin  
02:41PM 8 King, Edwin Bubba King. Does either side wish to have  
02:41PM 9 Judge King sworn?

02:41PM 10 MR. ANTON: No, Your Honor.

02:41PM 11 MS. SMITH: No, Your Honor.

12 MR. ANTON: Before we get started we would  
13 like to for the record introduce or have the Court take  
14 notice of the trial transcripts and the court reporter's  
15 record of the underlying case.

16 MS. SMITH: No objection to judicially  
17 noticing.

18 THE COURT: It's already as far as I know  
19 part of the record for this proceeding. I'm happy to  
20 take judicial notice of it for purposes of this hearing,  
21 that which I can remember.

22 MR. ANTON: We want to make the Reporter's  
23 Record and Court's record part of that record.

24 May I proceed?

25 THE COURT: Yes.

1 EDWIN V. KING

2 was called as a witness by the Applicant, testified as  
3 follows:

4 DIRECT EXAMINATION

02:41PM 5 BY MR. ANTON:

02:41PM 6 Q. State your name for the record.

02:42PM 7 A. Edwin V. King.

02:42PM 8 Q. What was your role in the trial of Randy  
02:42PM 9 Halprin?

02:42PM 10 A. I was second chair.

02:42PM 11 Q. In that capacity did you have anything to do  
02:42PM 12 with the appeal?

02:42PM 13 A. No.

02:42PM 14 Q. What specifically -- if there was a division of  
02:42PM 15 labor, what was it between you and Mr. Ashford, your  
02:42PM 16 co-counsel?

02:42PM 17 A. It wasn't a delineated division too much. He  
02:42PM 18 handled -- he selected the investigator. He selected  
02:42PM 19 the mitigation expert. He was handling all the  
02:42PM 20 mitigation. We kind of split up -- the ballistics I  
02:42PM 21 handled. We shared voir dire selection and rotated on  
02:42PM 22 that.

02:42PM 23 Q. Let me ask you about one other matter if you  
02:42PM 24 can recall. In many instances the judges don't like  
02:42PM 25 both attorneys to object. They like one attorney to do

02:43PM 1 it. Was there a rule understanding who would object  
02:43PM 2 various portions in the trial or among you and Mr.  
02:43PM 3 Ashford and the Court?

02:43PM 4 A. As I recall Judge Cunningham, whoever had the  
02:43PM 5 witness, was either doing the direct or cross-examining  
02:43PM 6 of the witness, they would object at that point as I  
02:43PM 7 recall. I don't think that it was just a free-for-all  
02:43PM 8 of different people objecting, although I don't have a  
02:43PM 9 clear recollection of it.

02:43PM 10 Q. What about in argument like punishment argument  
02:43PM 11 or guilt-innocence argument? Who would have had the  
02:43PM 12 duty to object?

02:43PM 13 A. I don't know. I think if we're talking about  
02:43PM 14 punishment argument, then it would have been either one  
02:43PM 15 of us probably. I don't think that's as delineated as  
02:43PM 16 having a witness.

02:43PM 17 Q. What about the guilt-innocence argument?

02:43PM 18 A. I would think that would be the same, probably  
02:44PM 19 either one of us.

02:44PM 20 Q. In preparation for testimony today you turned  
02:44PM 21 over your file to discovery; is that right?

02:44PM 22 A. That's correct.

02:44PM 23 Q. Have you reviewed anything since the trial?

02:44PM 24 A. I have read over the amended writ, the exhibits  
02:44PM 25 of the amended writ. I have looked over -- I didn't

02:44PM 1 bring them. They're down in the car. The other day you  
02:44PM 2 made me Xerox copies of handwritten notes.

02:44PM 3 And I have looked over a list of  
02:44PM 4 individuals. I brought that list with me that was  
02:44PM 5 tendered to me of people -- list of persons who provided  
02:44PM 6 information or assisted in preparation of ranking  
02:44PM 7 document. I have looked that over.

02:44PM 8 I haven't looked over the transcript of the  
02:44PM 9 trial. I haven't re-read the trial at any point in  
02:45PM 10 time. I never saw the appeal or the record on appeal.

02:45PM 11 Q. Did you read the writ?

02:45PM 12 A. I read the amended writ.

02:45PM 13 Q. The amended writ. Okay. Let me ask you a  
02:45PM 14 couple of questions. In regard to the preparation and  
02:45PM 15 the testimony of Dr. Kelly Goodness, did you play any  
02:45PM 16 role in that?

02:45PM 17 A. No.

02:45PM 18 Q. Even though you did not intend to present her  
02:45PM 19 as a witness yourself, did you have discussions with Mr.  
02:45PM 20 Ashford --

02:45PM 21 THE COURT: Just a minute

02:45PM 22 (Brief pause)

02:46PM 23 THE COURT: I'm sorry. Thank you. You can  
02:46PM 24 go back. You can proceed.

02:46PM 25 Q. (By Mr. Anton) Even though you didn't -- it

02:46PM 1 wasn't your responsibility to put on Ms. Goodness as a  
02:46PM 2 witness, did you have any discussions with George about  
02:46PM 3 her witness preparation and the evidence she was to  
02:46PM 4 give?

02:46PM 5 A. Yes.

02:46PM 6 Q. Can you remember what those were?

02:46PM 7 A. You know, during the course of preparing for  
02:46PM 8 trial from initially being appointed I would ask George  
02:46PM 9 certain things about what he was doing. He would ask me  
02:46PM 10 about what I was doing. We would try to make sure that  
02:46PM 11 whatever aspects of the trial that we were both trying  
02:46PM 12 to split up and cover -- I don't have a clear  
02:46PM 13 delineation of exactly what that was but he handled Ms.  
02:46PM 14 Goodness.

02:46PM 15 He selected Ms. Goodness. I would ask him  
02:46PM 16 how it was going, what she was getting. He would tell  
02:46PM 17 me the information she had garnered. I know he had a  
02:47PM 18 box load of records, you know, and that he had sat down  
02:47PM 19 with her and gone over her reports and that sort of  
02:47PM 20 thing.

02:47PM 21 He sat down and told me what she had found  
02:47PM 22 and what her position was going to be and how he was  
02:47PM 23 going to present it to the jury.

02:47PM 24 Q. Okay. Would it be fair to say that that was  
02:47PM 25 going -- that Dr. Goodness' testimony was going to be

02:47PM 1 the keystone of the punishment issues?

02:47PM 2 A. I don't know if it was to be the keystone.

02:47PM 3 Important? Yeah, just as any mitigation evidence is  
02:47PM 4 important. The trouble with the case was the uniqueness  
02:47PM 5 of the fact scenario. That was one of the prevailing  
02:47PM 6 problems.

02:48PM 7 I mean if hypothetically everything in the  
02:48PM 8 writ was a non-factor, by that I mean it had all been  
02:48PM 9 accomplished pursuant to the writ, would the result have  
02:48PM 10 been different? I don't know. I can't honestly say  
02:48PM 11 yes, it would. I can't honestly say no, it wouldn't.

02:48PM 12 That's only based on the fact that this was  
02:48PM 13 a case involving escaping from prison, committing a  
02:48PM 14 series of armed robberies and then the death of a police  
02:48PM 15 officer during a shoot-out. So would that mitigation  
02:48PM 16 have changed it? Very well might have. Would it not  
02:48PM 17 have changed it? Very well might have. I don't think  
02:48PM 18 anybody can honestly say yes or no.

02:48PM 19 Q. Okay. But going into the punishment phase  
02:48PM 20 would you agree that Dr. Goodness would have been an  
02:48PM 21 important witness?

02:48PM 22 A. Absolutely.

02:49PM 23 Q. As you were sitting second chair and realized  
02:49PM 24 that the Judge was not going to allow her to make a full  
02:49PM 25 presentation did you have discussions at that time with



02:49PM 1 Mr. Ashford about, "How can we repair this or can we get  
02:49PM 2 it in?"

02:49PM 3 A. I'm sure I did. I mean we were trying to -- I  
02:49PM 4 mean I know we sat down and huddled at one point about  
02:49PM 5 trying to get the records in but I think what George  
02:49PM 6 said is he was going to get them in in a different vein  
02:49PM 7 and not through her somehow.

02:49PM 8 I think that's where he decided he was  
02:49PM 9 going to go. I mean I don't remember clearly how he was  
02:49PM 10 going to go there. I don't know that -- I just don't  
02:50PM 11 know the answer to that.

02:50PM 12 Q. Let me ask you a couple of preliminary  
02:50PM 13 questions about some other matters. Between you and Mr.  
02:50PM 14 Ashford who had responsibility for objecting to the  
02:50PM 15 various jury charges?

02:50PM 16 A. I think we both objected on the record to the  
02:50PM 17 jury charges. It wasn't designated either one. Both of  
02:50PM 18 us had a responsibility to object to the charge.

02:50PM 19 Q. Are you familiar with something called the  
02:50PM 20 anti-parties charge?

02:50PM 21 A. Yes.

02:50PM 22 Q. Is there a reason that that charge was not  
02:50PM 23 requested?

02:50PM 24 A. Well, I mean the jury had to find whether or  
02:50PM 25 not he anticipated -- as I recall the vein of how we

02:51PM 1 approached that, Randy's testimony was that he hadn't  
02:51PM 2 shot, never fired his weapon, that he didn't want to  
02:51PM 3 carry a weapon, that he was kind of intimidated into  
02:51PM 4 having to carry the weapon, that he participated in one  
02:51PM 5 of the aggravated robberies in Houston or some place but  
02:51PM 6 had told them he didn't want to participate in the  
02:51PM 7 other.

02:51PM 8           No one had gotten hurt in those robberies  
02:51PM 9 and so the fact scenario -- nobody had gotten killed in  
02:51PM 10 the prison escape. And so the fact scenario of that  
02:51PM 11 sequence of events I think is what we argued as far as  
02:51PM 12 his not being able to anticipate that someone would get  
02:51PM 13 killed.

02:51PM 14       Q. Was there a reason to not request a specific  
02:51PM 15 anti-parties charge?

02:51PM 16       A. I can't recall right off the top of my head at  
02:51PM 17 this point in time. I honestly can't. I don't know.

02:51PM 18       Q. Okay. Now, also in preparation for the trial  
02:51PM 19 how Randy got his foot injury, was there a topic of  
02:52PM 20 discussion between you and Mr. Ashford?

02:52PM 21       A. Certainly.

02:52PM 22       Q. Do you recall telling Mr. Ashford that Randy  
02:52PM 23 had told you that he shot himself in the foot?

02:52PM 24       A. No. Randy never told me he shot himself in the  
02:52PM 25 foot.

02:52PM 1 Q. In preparation for this hearing have you  
02:52PM 2 reviewed the contemporaneous notes you took of that  
02:52PM 3 interview?

02:52PM 4 A. Correct.

02:52PM 5 Q. Based on the review of those notes is your  
02:52PM 6 recollection that conversation never took place?

02:52PM 7 A. No. Randy never told me, as far as I'm aware  
02:52PM 8 of never told anybody, that he shot himself in the foot.  
02:52PM 9 The shot in the foot was always allegedly from one --  
02:52PM 10 some flying bullet. It's a shot in the toe and it's  
02:52PM 11 obviously some type of ricochet. And entry wound on the  
02:52PM 12 toe appears to be from the side. I don't think that was  
02:52PM 13 ever disputed by anybody.

02:52PM 14 Q. In regard to that there was a medical report  
02:52PM 15 that was obtained, I think, from the physician in  
02:53PM 16 Colorado that treated him; is that right?

02:53PM 17 A. Correct.

02:53PM 18 Q. Was there an effort to get that medical report  
02:53PM 19 into evidence?

02:53PM 20 A. I tried to get to offer it in through a variety  
02:53PM 21 of different witnesses, specifically asking questions  
02:53PM 22 about it to the different investigators. I'm trying to  
02:53PM 23 remember if it was the FBI or who it was. Randy talked  
02:53PM 24 about it when he testified on the witness stand. The  
02:53PM 25 issue of entry of the bullet really, I don't think, was

02:53PM 1 an issue that even the State contested.

02:53PM 2 Now, if the question becomes, "All right.  
02:53PM 3 Is that injury as a result of a gun going off pointed  
02:53PM 4 straight down that ricochets left and right and injures  
02:53PM 5 his toe that way or a bullet firing from another  
02:53PM 6 direction fired by one of the other individuals or the  
02:53PM 7 officer or somebody else that ricochets and hits his  
02:54PM 8 foot," I don't think anybody can tell you the answer to  
02:54PM 9 that. Randy's position was that he never fired his gun  
02:54PM 10 and he certainly never shot himself.

02:54PM 11 Q. As a matter of fact, a lot of the discussions,  
02:54PM 12 cross-examinations of the various investigating  
02:54PM 13 officers, as well as some of the expert testimony had to  
02:54PM 14 deal with whether or not Randy had ever fired his gun,  
02:54PM 15 correct?

02:54PM 16 A. That's correct.

02:54PM 17 Q. And that was an important issue in the trial  
02:54PM 18 from your perspective?

02:54PM 19 A. Yeah, that was an important issue.

02:54PM 20 Q. Now, part of that -- part of the case in chief,  
02:54PM 21 I believe, that you introduced the statements of the  
02:54PM 22 other co-defendants, five of the other co-defendants; is  
02:54PM 23 that correct?

02:54PM 24 A. I honestly don't recall. I mean we tried to  
02:54PM 25 get in a lot of stuff a lot of different ways. So I

02:54PM 1 honestly don't recall how or who I offered at this  
02:54PM 2 point.

02:54PM 3 Q. And you're aware that in witness interviews  
02:55PM 4 some of the other co-defendants had indicated that --  
02:55PM 5 told the investigating officers that Randy Halprin had  
02:55PM 6 not fired his weapon.

02:55PM 7 A. That's correct. I was aware of that.

02:55PM 8 Q. A decision was made not to call those  
02:55PM 9 co-defendants as witnesses, correct?

02:55PM 10 A. That's correct.

02:55PM 11 Q. The reason for that was?

02:55PM 12 A. Well, I didn't think they had any veracity,  
02:55PM 13 number one. They had horrible records, number two.  
02:55PM 14 They would have been impeached with prior inconsistent  
02:55PM 15 statements, number three. They were -- it would be  
02:55PM 16 giving the State an additional opportunity to retry the  
02:55PM 17 activities of the other guys and be able to  
02:56PM 18 cross-examine them.

02:56PM 19 I just didn't see that there was any value  
02:56PM 20 in calling any of them. I had watched the George Rivas  
02:56PM 21 trial. I sat in on some of his testimony. I saw how he  
02:56PM 22 testified. I certainly didn't believe it was in Randy's  
02:56PM 23 best interest to call him as a witness.

02:56PM 24 It was obvious to me, watching him on the  
02:56PM 25 witness stand, that he did not appear to be a truthful

02:56PM 1 individual and he didn't come across with credibility.  
02:56PM 2 And I didn't see any value in Randy's case in that  
02:56PM 3 regard.

02:56PM 4 Q. Aside from the decision to actually call them,  
02:56PM 5 their statements could have possibly been available as  
02:56PM 6 statements against penal interests through the  
02:56PM 7 investigating officer. Did you consider that?

02:56PM 8 A. Yes.

02:56PM 9 Q. Is there a reason you did not pursue that?

02:56PM 10 A. Well, I think we did pursue it. I'm not -- I'm  
02:56PM 11 trying to remember what parts of -- I haven't read the  
02:57PM 12 trial transcripts. I don't recall what was offered,  
02:57PM 13 what was actually got in the presence of the jury and  
02:57PM 14 what Judge Cunningham wouldn't allow in. I just don't  
02:57PM 15 recall.

02:57PM 16 In regards to the statements against  
02:57PM 17 interests, I know that there was some indication --  
02:57PM 18 there was -- some people thought -- some of the  
02:57PM 19 co-defendants thought Randy had shot. That's what they  
02:57PM 20 initially told law enforcement. Then they changed their  
02:57PM 21 minds, said hadn't shot and his gun hadn't been fired.

02:57PM 22 Q. Let me specifically direct your attention --

02:57PM 23 A. Sure.

02:57PM 24 Q. -- if you can recall that Rodriguez and Murphy  
02:57PM 25 in their statements said after they got back or after

02:57PM 1 the shooting had occurred and they got back to the motel  
02:57PM 2 room that they inspected Randy's gun and it had not been  
02:57PM 3 fired.

02:57PM 4 A. Correct.

02:57PM 5 Q. That was part of the statement, the interview  
02:58PM 6 they gave to the police; is that right?

02:58PM 7 A. Correct.

02:58PM 8 Q. Now, I guess there's some concerns about under  
02:58PM 9 the Rule of Optional Completeness opening up the door to  
02:58PM 10 other things they might have told law enforcement but  
02:58PM 11 was there a strategic decision made not to try to elicit  
02:58PM 12 that testimony, that they had inspected the gun and  
02:58PM 13 determined it had not been fired?

02:58PM 14 A. I want to say that Murphy had made a statement  
02:58PM 15 about Newbury, that Newbury's gun hadn't been fired and  
02:58PM 16 it turned out it had been fired. Newbury said he had  
02:58PM 17 shot.

02:58PM 18 There was conflicting -- Mr. Rodriguez --  
02:58PM 19 other than the fact that he had been a major planner of  
02:58PM 20 the escape, if I am correct in recalling his  
02:58PM 21 participation, his family's participation, getting the  
02:58PM 22 Suburban, you know, once again I don't -- I mean clearly  
02:59PM 23 when you try to offer part of somebody's statement into  
02:59PM 24 evidence you run a big risk of opening the door to a lot  
02:59PM 25 of other stuff.

02:59PM 1 I think that's probably why we tried to get  
02:59PM 2 it in the way we did just so the jury would hear about  
02:59PM 3 it, try to get it in, put the skunk in the jury box, so  
02:59PM 4 to speak, in some respects.

02:59PM 5 I'll tell you that I recall trying to get  
02:59PM 6 some of the officers -- I know specifically some FBI  
02:59PM 7 agents, trying to get a subpoena served on them. I know  
02:59PM 8 that we got stonewalled by their location, by the FBI  
02:59PM 9 themselves telling us that they were out of the country  
02:59PM 10 or they were on special assignment.

02:59PM 11 I remember having an argument with some  
03:00PM 12 field agent out of Atlanta or some place, might have  
03:00PM 13 been D.C -- telling him -- I can't remember which agent  
03:00PM 14 it is. I remember having conversations like that. Law  
03:00PM 15 enforcement was not forthcoming, not very helpful.

03:00PM 16 And, you know, other than that, I can't  
03:00PM 17 think of any other reason why we didn't try to offer  
03:00PM 18 those things in, outside of just being afraid of opening  
03:00PM 19 the door.

03:00PM 20 Q. Okay. You did the primary -- the examination  
03:00PM 21 of Randy Halprin in the guilt-innocence phase.

03:00PM 22 A. Yes, sir.

03:00PM 23 Q. Would you agree a lot of that cross-examination  
03:00PM 24 was based upon a review of the letters that he had  
03:00PM 25 written, phone calls he had made, drawings and cartoons



03:00PM 1 that he had published?

03:00PM 2 A. Yeah. I think Mr. Shook spent a lot of time  
03:00PM 3 calling him a liar.

03:00PM 4 Q. And is it -- would you agree that just when a  
03:01PM 5 person takes the stand that that doesn't necessarily put  
03:01PM 6 his character or his veracity at issue such that it  
03:01PM 7 would allow the State to introduce any kind of document  
03:01PM 8 whatsoever?

03:01PM 9 A. Well, we were aware of the letters and I don't  
03:01PM 10 recall if on direct examination I made some attempt to  
03:01PM 11 diffuse that by bringing that up in direct examination.  
03:01PM 12 I honestly -- without having to read that, I don't  
03:01PM 13 recall whether or not I said, "Randy, in the letter you  
03:01PM 14 talked about doing something. Why did you do that,"  
03:01PM 15 just so I could jump it out there first before the State  
03:01PM 16 got to do it on cross.

03:01PM 17 I don't recall. I think that when somebody  
03:02PM 18 writes a letter and says they're planning on doing  
03:02PM 19 something in the form of manipulation, I think that's  
03:02PM 20 admissible.

03:02PM 21 Q. Admissible --

03:02PM 22 A. For purposes of cross-examination, to go to  
03:02PM 23 their veracity. I think that's admissible. I think if  
03:02PM 24 they admit being a liar, then I think that's something  
03:02PM 25 that on cross-examination can be explored. I don't

03:02PM 1 think that either side under those circumstances -- I  
03:02PM 2 wouldn't think defense counsel would be hamstrung if  
03:02PM 3 they had a letter or something like that and could show  
03:02PM 4 that somebody described themselves as a liar or  
03:02PM 5 something else.

03:02PM 6 I mean I think all of us as defense lawyers  
03:02PM 7 would be gleeful with the opportunity and I think that  
03:02PM 8 would be fair game and it's admissible.

03:02PM 9 Q. You think it's admissible to bring up a laundry  
03:02PM 10 list of specific instances in which the person had lied  
03:03PM 11 in the past?

03:03PM 12 A. Well, you run the risk in trial of trying to  
03:03PM 13 decide whether or not you're making an objection that's  
03:03PM 14 going to get something reversed down the line or making  
03:03PM 15 an objection that's not going to get something reversed  
03:03PM 16 and the Court of Criminal Appeals or the Supreme Court  
03:03PM 17 is going to say is harmless error and alienating the  
03:03PM 18 jury by having them think you're hiding something if you  
03:03PM 19 make an objection on something that is already out  
03:03PM 20 there.

03:03PM 21 Whether or not the State is beating a dead  
03:03PM 22 horse on the issue of him lying or not, there's some  
03:03PM 23 value for the defense in saying, "So what? They have  
03:03PM 24 already brought that out. He's already admitted to  
03:03PM 25 that. That's not anything. He's trying to tell you the

03:04PM 1 truth now. He's never told anybody -- he's always told  
03:04PM 2 everybody he never shot his gun."

03:04PM 3 That's an issue. You know, I just don't  
03:04PM 4 think necessarily simply because there's an objection  
03:04PM 5 that can be made that it's always the best trial  
03:04PM 6 strategy to make the objection. It depends on what you  
03:04PM 7 are going to gain from that objection down the line.

03:04PM 8 Q. Was your strategy when Randy Halprin was put on  
03:04PM 9 the stand to keep his direct examination somewhat brief  
03:04PM 10 in terms of the topics covered?

03:04PM 11 A. From interviewing Randy I knew he didn't hold  
03:04PM 12 attention well, had some problems staying on topic, had  
03:04PM 13 a tendency to drift off on something, tried to make it  
03:04PM 14 short and sweet to keep it a little simplified.

03:05PM 15 We had discussed whether or not Randy  
03:05PM 16 should testify or not. You know, certainly talked to  
03:05PM 17 Randy about whether or not he wanted to testify, went  
03:05PM 18 through all the litanies of "If you don't want to  
03:05PM 19 testify, nobody can make you," that sort of thing.

03:05PM 20 I think in this type of case it's a damned  
03:05PM 21 if you do, damned if you don't. If you don't testify,  
03:05PM 22 you got problems. If you do testify, you got problems.  
03:05PM 23 And I don't think that it was necessarily to shorten it  
03:05PM 24 up but to try to make it more manageable.

03:05PM 25 Q. When he was on the stand I think you asked him

03:05PM 1 about whether or not he fired the shot. You covered  
03:05PM 2 that topic.

03:05PM 3 A. I presume I did. Once again, Mr. Anton, I  
03:05PM 4 haven't read the transcript of the trial and it's been  
03:06PM 5 since June of -- what -- 03?

03:06PM 6 Q. Let me ask you this: do you recall on the  
03:06PM 7 stand -- when he was on the stand if you ever opened the  
03:06PM 8 door to his honesty like asking him, "Have you ever lied  
03:06PM 9 in the past or have you ever manipulated or conned  
03:06PM 10 people?"

03:06PM 11 A. I don't know. If I thought that was coming  
03:06PM 12 from the State, I probably would. I probably would have  
03:06PM 13 done that. But that's -- so you have got a defendant on  
03:06PM 14 the stand and you know he's got an admissible  
03:06PM 15 conviction.

03:06PM 16 Typically you're going to bring it out so  
03:06PM 17 the State doesn't bring it out so you can deal with it.  
03:06PM 18 That's basic trial strategy. If there's something in  
03:06PM 19 the letters that's going to hurt him -- I don't recall  
03:06PM 20 whether or not I asked that question or not -- that  
03:06PM 21 would have been, I think, a prudent thing to do, to  
03:06PM 22 bring it out ourselves to try to show that we're being  
03:06PM 23 upright and truthful with the jury and not trying to  
03:06PM 24 hide the ball from them because this is certainly the  
03:06PM 25 type of case -- capital murder cases, you don't want to

03:07PM 1 try to hide something from the jury.

03:07PM 2 That kind of goes back to your issue about  
03:07PM 3 the objections. If it's not of constitutional  
03:07PM 4 proportion such it's going to get you a new trial, even  
03:07PM 5 with cumulative error, from what I understand from those  
03:07PM 6 learned individuals on the Court of Criminal Appeals,  
03:07PM 7 it's probably going to be held as harmless error.

03:07PM 8 Q. You received, I think, in advance of trial  
03:07PM 9 several boxes, I think, of letters that he had written.

03:07PM 10 A. Yes.

03:07PM 11 Q. I assume to some extent those were reviewed.

03:07PM 12 A. Yes.

03:07PM 13 Q. There was some anticipation he's written too  
03:07PM 14 many letters and got a lot to answer for.

03:07PM 15 A. Well, you know, when I first got appointed and  
03:08PM 16 talked with Randy and I went up to Colorado he had  
03:08PM 17 already given at least one interview by that time and  
03:08PM 18 certainly talked to law enforcement. I told him -- I  
03:08PM 19 said, "Anything you say, anything you write, they're  
03:08PM 20 going to make a copy of."

03:08PM 21 When he got here to Dallas County told him  
03:08PM 22 again. "Anything you say, anything you write, any phone  
03:08PM 23 calls you make it's not to one of the lawyers, it's not  
03:08PM 24 privileged and anything you do is going -- they're going  
03:08PM 25 to maybe come back and hurt you."

03:08PM 1           Those issues had been discussed with Randy.  
03:08PM 2 Randy wrote letters. We tried to deal with them best we  
03:08PM 3 could.

03:08PM 4           Q. Well, if I told you that you on your direct at  
03:08PM 5 least, not that I can find you did not open the door to  
03:08PM 6 whether or not he lied before or manipulated before but  
03:08PM 7 the State started out their cross-examination basically  
03:08PM 8 with, "Have you ever lied?" If I understand what you're  
03:09PM 9 saying, there's a couple of strategies in play here.

03:09PM 10           One, you don't want to object too much in  
03:09PM 11 front of the jury because you don't want to appear to be  
03:09PM 12 hiding things, right?

03:09PM 13           A. Right.

03:09PM 14           Q. Second is if it's a problem, it's sometimes  
03:09PM 15 best to deal with it by letting the State have their  
03:09PM 16 shot.

03:09PM 17           A. Sometimes.

03:09PM 18           Q. But obviously -- would you agree that having  
03:09PM 19 the prosecutor detail a long list of alleged  
03:09PM 20 misrepresentation, con jobs and lies was damaging to Mr.  
03:09PM 21 Halprin's credibility?

03:09PM 22           A. Certainly didn't help his credibility, no.

03:09PM 23           Q. Do you think that an objection or request to  
03:09PM 24 approach the bench and put a limit on that  
03:10PM 25 cross-examination could have ameliorated some of the

03:10PM 1 damage?

03:10PM 2 A. Maybe. I don't know.

03:10PM 3 Q. Bottom line is when you are in charge --

03:10PM 4 A. I don't know. I'm sorry. I don't mean to  
03:10PM 5 interrupt. If you have got a letter from a defendant or  
03:10PM 6 a letter from anyone where they admit that they're lying  
03:10PM 7 or they're manipulating and they testify on the witness  
03:10PM 8 stand on cross-examination, I think that's permissible  
03:10PM 9 and I think it's something that can be admitted into  
03:10PM 10 evidence.

03:10PM 11 I don't think it goes necessarily to  
03:10PM 12 character for lying. I think if you are talking about a  
03:10PM 13 specific instance where somebody admits it, then I think  
03:10PM 14 you're entitled to do it. Veracity of any witness  
03:10PM 15 becomes an issue in a trial, whether it's a State or  
03:10PM 16 defense witness.

03:10PM 17 Q. Part of the reason was that you didn't perceive  
03:10PM 18 that that was necessarily objectionable?

03:10PM 19 A. I would have liked to have kept it out but when  
03:10PM 20 somebody says, "I'm going to wear glasses and try to  
03:11PM 21 manipulate it, wear this type of clothes," I think --  
03:11PM 22 that kind of stuff, I don't think you can necessarily  
03:11PM 23 keep that out.

03:11PM 24 That goes to the veracity of the individual  
03:11PM 25 on the witness stand. If they have made a prior

03:11PM 1 statement that indicates that you have got a problem if  
03:11PM 2 they take the stand.

03:11PM 3 Q. So I guess the bottom line in terms of  
03:11PM 4 supervising the cross-examination of Randy Halprin is  
03:11PM 5 that while it was on-going you thought that the topics  
03:11PM 6 raised by the State were generally within fair game for  
03:11PM 7 cross-examination?

03:11PM 8 A. I would have preferred they didn't go that  
03:11PM 9 route but I didn't expect Mr. Shook not to try to show  
03:11PM 10 Randy not to be a truthful individual. That's the goal  
03:11PM 11 of essentially everybody who is trying to cross-examine  
03:11PM 12 any witness in any criminal court if they're giving  
03:11PM 13 testimony that hurts you.

03:12PM 14 The purpose of cross-examination is to try  
03:12PM 15 to show they're not a truthful individual if you can if  
03:12PM 16 that testimony is damaging to your case. Is that  
03:12PM 17 inadmissible evidence? I'm not sure that is. Once  
03:12PM 18 again, you run the risk standing up and objecting to  
03:12PM 19 every little tiny thing in front of the jury.

03:12PM 20 And after you have done that you have lost  
03:12PM 21 all credibility to them as a lawyer. When you stand up  
03:12PM 22 and make your final argument my experience of 31 years  
03:12PM 23 tells me if you hadn't been honest with them in front of  
03:12PM 24 them, you have got problems when you're trying to  
03:12PM 25 finalize it all.



03:12PM 1 Q. Let me move on to the final argument. You  
03:12PM 2 understand in the first phase of a death penalty case,  
03:12PM 3 the guilt-innocence phase, the issue is a person can be  
03:12PM 4 convicted of capital murder if they should have  
03:12PM 5 anticipated a killing and acted as a party, correct?

03:12PM 6 A. Yes.

03:12PM 7 Q. At the punishment phase it's did they  
03:12PM 8 anticipate?

03:12PM 9 A. Yes.

03:12PM 10 Q. I think that a lot of the voir dire or  
03:13PM 11 presentation was an explanation of how the law of  
03:13PM 12 parties interacts with the special issues, right?

03:13PM 13 A. Yes.

03:13PM 14 Q. Your understanding of the law is just because a  
03:13PM 15 person brings a gun to a robbery doesn't necessarily  
03:13PM 16 mean that the answer to the second special issue is yes  
03:13PM 17 just merely being present with a gun?

03:13PM 18 A. Certainly. That's correct.

03:13PM 19 Q. That goes to the burden of proof that the State  
03:13PM 20 has in answering that special issue?

03:13PM 21 A. Certainly.

03:13PM 22 Q. If the State misstates the burden of proof in  
03:13PM 23 the final argument as to that special issue, is that the  
03:13PM 24 kind of argument that should be objected to?

03:13PM 25 A. I would think so, yes.

03:13PM 1 Q. Between you and Mr. Ashford, if you can recall,  
03:13PM 2 at the punishment phase who would have had the  
03:13PM 3 obligation to object or would it have been both of you?

03:13PM 4 A. I think both of us.

03:13PM 5 Q. Do you recall the State arguing --

03:14PM 6 MR. ANTON: I can approach the witness --  
03:14PM 7 may I approach?

03:14PM 8 Q. (By Mr. Anton) Let me show you an excerpt from  
03:14PM 9 the trial record, Volume 53, page 82. If you would read  
03:14PM 10 that portion right there.

03:14PM 11 A. Yes, sir.

03:14PM 12 Q. Where the prosecutor argues, "Most of you told  
03:14PM 13 us that taking a loaded gun into a store, robbery, that  
03:14PM 14 by itself, you learned that he knew or anticipated,  
03:14PM 15 someone in that circumstance, they would have to use it  
03:14PM 16 and, you know, you can use that fact by itself to answer  
03:14PM 17 the issue."

03:14PM 18 Do you think that's an objectionable  
03:14PM 19 argument?

03:14PM 20 A. No, I don't.

03:14PM 21 Q. Why?

03:14PM 22 A. Because it uses the word "anticipate." It's a  
03:15PM 23 reasonable deduction from the evidence based on how the  
03:15PM 24 State presented it. Now, is that an objection that  
03:15PM 25 that's a misstatement of the law?

03:15PM 1 I'm not sure that when you -- say when you  
03:15PM 2 are talking about that he anticipated it, once they say  
03:15PM 3 that, I don't think that that makes it an objectionable  
03:15PM 4 argument. I mean the issue as to whether or not he had  
03:15PM 5 a weapon, does that make them answer that special issue  
03:15PM 6 no, the simple possession of a weapon?

03:15PM 7 Neither does the simple possession of a  
03:15PM 8 weapon answer whether or not it's an intentional killing  
03:15PM 9 or that he should have anticipated. Those issues are  
03:15PM 10 for the jury to decide and they're not per se --  
03:15PM 11 possession of a firearm, a loaded firearm or taking a  
03:15PM 12 loaded firearm does not per se answer those for the  
03:15PM 13 jury.

03:15PM 14 Q. When the prosecutor said, "And, you know, you  
03:15PM 15 can use that fact by itself to answer that question,"  
03:15PM 16 they can't use that fact by itself, can they?

03:16PM 17 A. What? Anticipate?

03:16PM 18 Q. Yeah. They can't use the fact that he brought  
03:16PM 19 a gun to the robbery by itself to show that he  
03:16PM 20 anticipated the killing would occur for the second  
03:16PM 21 special issue.

03:16PM 22 A. No. I think you're right under Edmond.

03:16PM 23 Q. Would that have been appropriate to object to?

03:16PM 24 A. Probably would have been appropriate to object  
03:16PM 25 to.

03:16PM 1 Q. And then later on they argue their intent is  
03:16PM 2 clear, all the different guns used. If anybody got in  
03:16PM 3 the way they're going to take them -- from all the  
03:16PM 4 evidence these men, the weapons they were using, you're  
03:16PM 5 referring to the fact that there are several people  
03:16PM 6 using guns.

03:16PM 7 Maybe his gun misfired. Maybe someone  
03:16PM 8 murdered the victim before him, an example of that. The  
03:16PM 9 fact that he brought the weapon to the scene even though  
03:16PM 10 he didn't necessarily fire it, do you think that reduced  
03:16PM 11 their burden of proof?

03:16PM 12 A. No.

03:16PM 13 Q. You don't think that argument was objectionable  
03:17PM 14 under Tyson?

03:17PM 15 A. I didn't say that. Not sure -- I'm not sure  
03:17PM 16 that it's objectionable. I don't think that necessarily  
03:17PM 17 reduced their burden of proof either.

03:17PM 18 MR. ANTON: That's all the questions I  
03:17PM 19 have, Your Honor.

03:17PM 20 Q. (By Mr. Udashen) Mr. King, let me ask you some  
03:17PM 21 questions about the ranking document.

03:17PM 22 A. Sure.

03:17PM 23 Q. Exhibit -- I believe is Defendant's Exhibit  
03:17PM 24 Number 39 which everybody calls the ranking document.  
03:17PM 25 When is the first time you ever saw that?

03:17PM 1 A. First time ever saw that was when I was busting  
03:17PM 2 out the boxes of discovery. George had picked up the  
03:17PM 3 discovery from the D. A.'s office. He had taken it to a  
03:17PM 4 printer down here off of -- what was then Industrial, I  
03:17PM 5 guess is now Riverside, whatever they're calling it.

03:17PM 6 THE COURT: I think it's Riverfront.

03:17PM 7 THE WITNESS: Thank you, Your Honor.

03:17PM 8 A. I went over and picked up my boxes of evidence  
03:17PM 9 from there, took those boxes to my office, proceeded to  
03:18PM 10 break them out into sections. For example, the Colorado  
03:18PM 11 parts -- trying to remember the county. It starts with  
03:18PM 12 a "T." But whatever county that was the Sheriff's  
03:18PM 13 Office.

03:18PM 14 Those reports, broke it out into sections  
03:18PM 15 for purposes of reviewing it and trying to figure out  
03:18PM 16 what was useable and review the discovery. In the  
03:18PM 17 process of that, started coming across these packages  
03:18PM 18 that didn't seem to fit with the other parts of the  
03:18PM 19 report.

03:18PM 20 And it turned out that that ranking  
03:18PM 21 document, pages had been interspersed throughout the  
03:18PM 22 box. There wasn't any other documents that were out of  
03:18PM 23 sequence, out of order. There wasn't an extra page from  
03:19PM 24 the Irving Police Department that had ended up in the  
03:19PM 25 Colorado investigation, anything like that. But the

03:19PM 1 pages of the ranking document were not together.

03:19PM 2 THE COURT: How many pages were there?

03:19PM 3 THE WITNESS: I don't recall, Judge. I  
03:19PM 4 know there was a couple. Can't remember if it was four,  
03:19PM 5 five, ten. I just don't recall.

03:19PM 6 A. I just know that during the course of pulling  
03:19PM 7 it all out and rolling through it George and I both  
03:19PM 8 ended up with this one document that just didn't  
03:19PM 9 appear -- didn't appear to have any sponsoring  
03:19PM 10 individual, no signatures.

03:19PM 11 It was kind of a unique document.  
03:19PM 12 Everything else there, you could tell who had done it,  
03:19PM 13 you know, which police officer, which FBI agent,  
03:19PM 14 everything else. That thing nobody knew about and  
03:19PM 15 nobody ever admitted knowing about.

03:19PM 16 THE COURT: Did you read the transcripts of  
03:20PM 17 the previous four trials in preparation for this trial?

03:20PM 18 THE WITNESS: No. I think I got -- I take  
03:20PM 19 that back. I think I got copies of the transcripts and  
03:20PM 20 read over the direct and cross-examination of most of  
03:20PM 21 the State's witnesses. I know Rivas was the first one  
03:20PM 22 to go to trial and we got that out pretty quick.

03:20PM 23 I know that everybody else that was  
03:20PM 24 representing one of the seven got copies of it because  
03:20PM 25 it was on disk. I'm trying to remember whether or not I

03:20PM 1 matched everybody's direct up. I know on  
03:20PM 2 cross-examination in Randy's trial I remember  
03:20PM 3 contrasting the testimony that had changed from one  
03:21PM 4 witness to another during the course of the different  
03:21PM 5 trials.

03:21PM 6 I'm thinking of the sporting goods people  
03:21PM 7 out in Irving that had testified in one trial this  
03:21PM 8 happened and in a different trial they testified  
03:21PM 9 something else happened. I remember doing that. Every  
03:21PM 10 word of it I couldn't tell you now.

03:21PM 11 THE COURT: Any hints of a ranking document  
03:21PM 12 in anything you read prior to discovering it in the  
03:21PM 13 boxes?

03:21PM 14 THE WITNESS: The first discovery we did  
03:21PM 15 was the box of information. That's when we found the  
03:21PM 16 ranking document.

03:21PM 17 THE COURT: Was there any hint of a ranking  
03:21PM 18 document in anything you read in any of the other  
03:21PM 19 trials?

03:21PM 20 THE WITNESS: I don't recall. I don't  
03:21PM 21 think so but I don't recall. I don't recall the ranking  
03:21PM 22 document being mentioned in any other document that was  
03:21PM 23 tendered to us. It wasn't any reference in the TDCJ, in  
03:22PM 24 their investigative notes that might have been given  
03:22PM 25 that referred to the ranking document, I don't believe.

03:22PM 1 THE COURT: So when you first, as you said,  
03:22PM 2 busted out these boxes and came across these ranking  
03:22PM 3 documents how much time expired from that period of time  
03:22PM 4 until the time you started the guilt-innocence portion  
03:22PM 5 of the trial?

03:22PM 6 THE WITNESS: I don't recall when we --

03:22PM 7 THE COURT: Would it be months?

03:22PM 8 THE WITNESS: Certainly.

03:22PM 9 THE COURT: A year maybe?

03:22PM 10 THE WITNESS: Could be.

03:22PM 11 THE COURT: Go ahead, Mr. Udashen.

03:22PM 12 Q. (By Mr. Udashen) Mr. King, when you saw the  
03:22PM 13 ranking document you said there was no supporting  
03:22PM 14 documents attached to it or in sequence with it?

03:22PM 15 A. No.

03:22PM 16 Q. And you have reviewed the writ we filed and all  
03:22PM 17 the documents we filed in connection with the writ?

03:23PM 18 A. Correct.

03:23PM 19 Q. Have you seen in there that there are documents  
03:23PM 20 that go with the ranking document?

03:23PM 21 A. Yes.

03:23PM 22 Q. Those documents actually identify who the  
03:23PM 23 author is?

03:23PM 24 A. Yes.

03:23PM 25 Q. At the time you saw the ranking document in the



03:23PM 1 State's discovery you had no idea who wrote it; is that  
03:23PM 2 right?

03:23PM 3 A. That's correct.

03:23PM 4 Q. Have you heard that different members of the  
03:23PM 5 State's prosecution team had actually said at different  
03:23PM 6 times that they had never seen the document until you  
03:23PM 7 produced it in court?

03:23PM 8 A. I have heard that being said.

03:23PM 9 Q. Is that true?

03:23PM 10 A. No.

03:23PM 11 Q. Why do you say that isn't true?

03:23PM 12 A. We asked them about it and everybody said they  
03:23PM 13 didn't know where it came from or what it was. Nobody,  
03:23PM 14 not TDCJ, not the Office of the Inspector General,  
03:23PM 15 whoever those people are. Everybody denied ever seeing  
03:23PM 16 this document. I mean everybody.

03:23PM 17 Q. You're not the one that gave it to the State.  
03:23PM 18 The State gave it to you.

03:23PM 19 A. No. We got it in the discovery but, once  
03:23PM 20 again, it was interspersed in the discovery. Whoever --  
03:24PM 21 whoever put the box of discovery together and gave it to  
03:24PM 22 George Ashford, whether either intentionally or  
03:24PM 23 recklessly or unintentionally, took that document apart  
03:24PM 24 and spread it through there or it was already apart and  
03:24PM 25 spread it through there.

03:24PM 1 And when they came across it, I guess --  
03:24PM 2 because surely my experience is when the State gives you  
03:24PM 3 discovery they have gone through it because they have  
03:24PM 4 culled out a hell of a lot of stuff because they're not  
03:24PM 5 giving you everything they got.

03:24PM 6 THE COURT: Do you recall if it was Bates  
03:24PM 7 stamped when you saw it?

03:24PM 8 THE WITNESS: It was Bates stamped when I  
03:24PM 9 got it but I don't know if George had it Bates stamped  
03:24PM 10 at the printer or if it was Bates stamped before by the  
03:24PM 11 D. A.'s office and then tendered to us. I want to say  
03:24PM 12 the Bates stamps on the document itself, on the pages  
03:24PM 13 was not sequential.

03:24PM 14 In other words, whoever Bates stamped it --  
03:25PM 15 you had one page be 51. Then another page might be 62  
03:25PM 16 which would be the second page belonging to the  
03:25PM 17 document. Fifty-one was the first page and 62 was the  
03:25PM 18 second page, should have been 51, 52, 53 in the Bates  
03:25PM 19 stamp system. I don't think that they were Bates  
03:25PM 20 stamped in sequential order when you put them together.

03:25PM 21 Q. (By Mr. Udashen) Are you trying to say that you  
03:25PM 22 think somebody intentionally pulled this apart to  
03:25PM 23 mislead you?

03:25PM 24 A. Yeah, I think so.

03:25PM 25 Q. What do you think happened? What are you

03:25PM 1 saying?

03:25PM 2 A. I'll tell you. I have told you this before.  
03:25PM 3 There's an old movie out. Gene Hackman is a civil  
03:25PM 4 lawyer in the case. He has got a daughter on the other  
03:25PM 5 side, big car blow-up case, you know, wrongful death  
03:25PM 6 scenario. And the defense, the insurance defense, they  
03:25PM 7 have got this engineer's document and they know that's  
03:25PM 8 what Gene Hackman is looking for.

03:26PM 9 What happens is they decide what they're  
03:26PM 10 going to do is take the document apart put it in about  
03:26PM 11 200 different boxes of all different types of discovery  
03:26PM 12 and submit it to them and make them dig through it in  
03:26PM 13 hopes they won't be able to put it together in time for  
03:26PM 14 trial.

03:26PM 15 I'm not saying that anybody on the State's  
03:26PM 16 side knows about that movie but I can tell you this: it  
03:26PM 17 wasn't together in the box of evidence. The State gave  
03:26PM 18 it to us. We got it. It's obvious now that they had it  
03:26PM 19 before. It's obvious now that the Texas Rangers are the  
03:26PM 20 ones -- Mr. Whitman is the one that put that document  
03:26PM 21 together.

03:26PM 22 And to say the State didn't know that  
03:26PM 23 during the course of this investigation, during the  
03:26PM 24 course of this trial is not the truth. I could use  
03:26PM 25 stronger language than that and I would but it's not my

03:26PM 1 court.

03:26PM 2 Q. Did you talk to Toby Shook about this document  
03:26PM 3 before trial?

03:26PM 4 A. I recall talking to Toby and talking to Tom and  
03:27PM 5 everybody said they didn't know where it came from. I  
03:27PM 6 recall talking to the Office of Inspector General. They  
03:27PM 7 said they didn't know where it came from. Hell, it was  
03:27PM 8 in their box when S. O. Woods went back up there and  
03:27PM 9 looked.

03:27PM 10 And they had it in their box and still they  
03:27PM 11 said they didn't have it. You're going to tell me that  
03:27PM 12 the Texas Rangers doing the investigation of an escape  
03:27PM 13 of seven people that results in the death of a law  
03:27PM 14 enforcement officer and TDCJ doesn't have a copy of it?

03:27PM 15 Office of Inspector General doesn't have a  
03:27PM 16 copy of it and nobody in the D. A.'s office has a copy  
03:27PM 17 of it. And everybody that goes on the witness stand  
03:27PM 18 says, "By golly, we have never seen that before." If  
03:27PM 19 that's the truth, I'll eat this microphone.

03:27PM 20 Q. What efforts did you make prior to or during  
03:27PM 21 trial to determine who the author of that document was?

03:27PM 22 A. We asked the State. They said on the record  
03:27PM 23 they didn't know where that document came from. We  
03:27PM 24 asked TDCJ. They said it wasn't their document; they  
03:27PM 25 didn't know. We got the custodian of records for the

03:28PM 1 Office of Inspector General.

03:28PM 2           They said it wasn't their document. They  
03:28PM 3 had never seen it. They didn't know where it came from.  
03:28PM 4 We didn't know where it came from. We didn't have a  
03:28PM 5 clue.

03:28PM 6           Q. Had you discovered who the author was, would  
03:28PM 7 you have gotten him to testify?

03:28PM 8           A. Certainly if I known it was the Texas Rangers  
03:28PM 9 and Whitman in particular, I would have issued a  
03:28PM 10 subpoena for him. We would have issued a subpoena for  
03:28PM 11 anybody that prepared that document. That document, I'm  
03:28PM 12 still confused.

03:28PM 13           It's a business document under TDCJ which  
03:28PM 14 is not a business as any other normal business. It's  
03:28PM 15 the business of keeping prisoners. When you keep  
03:28PM 16 prisoners, the damn diagram depends on the circumstances  
03:28PM 17 that take place at a prison and when you have an escape,  
03:28PM 18 then it's that business record, that type of  
03:28PM 19 investigation that constitutes a business record because  
03:28PM 20 that's what they do.

03:28PM 21           That's the business they're in is trying to  
03:28PM 22 figure out how the escape took place, who was high and  
03:28PM 23 low man. And to say that's not a business record is  
03:29PM 24 ridiculous and to say that you don't know who sponsored  
03:29PM 25 it, that's ridiculous. I don't believe it for a minute.

03:29PM 1 Q. But did you make -- you made every effort you  
03:29PM 2 could think of to find some way to get that in evidence.

03:29PM 3 A. Absolutely did.

03:29PM 4 Q. There was no strategy decision to forego some  
03:29PM 5 possibility of getting that in evidence?

03:29PM 6 A. No. Everybody denied it and there was some  
03:29PM 7 insinuation that somehow we created it or some crazy  
03:29PM 8 crap like that and that's all it was was crap.

03:29PM 9 THE COURT: Excuse me.

03:29PM 10 THE WITNESS: Excuse me, Your Honor. I  
03:29PM 11 apologize to the Court.

03:29PM 12 A. It was a load of bahooley (sic).

03:29PM 13 Q. (By Mr. Udashen) I sent you a couple days ago a  
03:29PM 14 list of people who I think you referred to from our  
03:29PM 15 review of the State's files may have participated in the  
03:29PM 16 preparation of this document either being interviewed by  
03:29PM 17 investigators or being investigators who participated in  
03:29PM 18 it.

03:29PM 19 A. Yes.

03:29PM 20 Q. You have reviewed that list?

03:29PM 21 A. Yes.

03:29PM 22 Q. Let me talk to you specifically about the  
03:30PM 23 inmates on that list, the non-prison employees and  
03:30PM 24 non-prison investigators. Those people -- were you ever  
03:30PM 25 made aware that any of those people had been interviewed

03:30PM 1 by any state official as part of this investigation, in  
03:30PM 2 particular as part of this preparation of this ranking  
03:30PM 3 document?

03:30PM 4 A. Some of them, yes. Those individuals who have  
03:30PM 5 been -- those individuals involved as either witnesses  
03:30PM 6 to the break-out itself or who became victims during the  
03:30PM 7 course of the break-out. In other words, they were in  
03:30PM 8 the maintenance room or they came back from lunch and  
03:30PM 9 they got tied up.

03:30PM 10 I know David Lee Cook was one of them. We  
03:30PM 11 were tendered some statement by David Lee Cook. I don't  
03:30PM 12 know that we were tendered all the statements by him.  
03:30PM 13 Whatever is in my file on David Lee Cook is in my file.

03:30PM 14 Q. What about Michael Carter?

03:30PM 15 A. No.

03:30PM 16 Q. What about Timothy Black?

03:31PM 17 A. No.

03:31PM 18 Q. Charles David?

03:31PM 19 A. No.

03:31PM 20 Q. David Slocum?

03:31PM 21 A. No.

03:31PM 22 Q. George Reams Rogers?

03:31PM 23 A. No.

03:31PM 24 Q. Were you given the names of anybody who had  
03:31PM 25 given exculpatory statements to any investigator that

03:31PM 1 went into the preparation of this document?

03:31PM 2 A. No. Certainly didn't get -- none of these  
03:31PM 3 Texas Rangers appeared -- I didn't see -- I don't recall  
03:31PM 4 seeing their names on any document. Certainly Mr.  
03:31PM 5 Whitman's name is not on any document that was tendered  
03:31PM 6 to us in discovery.

03:31PM 7 I can't imagine -- I haven't -- I'm trying  
03:32PM 8 to recall the complete -- I haven't seen the official  
03:32PM 9 complete document that Ranger Whitman would have  
03:32PM 10 prepared. I don't know if there's a cover letter. I  
03:32PM 11 don't know if there's something he signed.

03:32PM 12 I just don't know what's there. I know  
03:32PM 13 what we received which was something that you couldn't  
03:32PM 14 figure out where it belonged, what report it was part  
03:32PM 15 of.

03:32PM 16 Q. But you understand now everybody agrees that  
03:32PM 17 Sgt. Whitman prepared it?

03:32PM 18 A. That's what I have been told.

03:33PM 19 MR. UDASHEN: Pass the witness, Your Honor.

03:33PM 20 MS. SMITH: Did you pass the witness?

03:34PM 21 MR. UDASHEN: Yes.

03:34PM 22 THE COURT: Don't act so surprised.

03:34PM 23 MS. SMITH: We have been here for a while.

03:34PM 24

25



CROSS-EXAMINATION

03:34PM 1

03:34PM 2 BY MS. SMITH:

03:34PM 3 Q. Good afternoon, Mr. King.

03:34PM 4 A. Ms. Smith.

03:34PM 5 Q. You mentioned earlier that you reviewed a few  
03:34PM 6 things before you came here to testify today. Did you  
03:34PM 7 happen to review the State's response to the writ  
03:34PM 8 application?

03:34PM 9 A. No, I did not.

03:34PM 10 Q. Have you seen the affidavits of any of the  
03:34PM 11 witnesses such as Dr. Goodness or the author of the  
03:34PM 12 ranking document, Mr. Whitman?

03:34PM 13 A. I have not seen the affidavit of Mr. Whitman.  
03:34PM 14 I have seen the affidavit of Dr. Goodness. I think  
03:34PM 15 that's in the adjoining volume if it's the same  
03:34PM 16 affidavit. I don't know if there's a separate affidavit  
03:34PM 17 from Dr. Goodness. If it's the same one, I have seen an  
03:34PM 18 affidavit that Dr. Goodness did.

03:34PM 19 MS. SMITH: May I approach, Judge?

03:34PM 20 A. I don't know if that's here in front of me.

03:35PM 21 Q. (By Ms. Smith) What I am about to show you is  
03:35PM 22 already in evidence. Since it's addressed to you I  
03:35PM 23 would like to have you confirm --

03:35PM 24 A. Yes.

03:35PM 25 Q. I believe this is State's Writ Exhibit 0.

03:35PM 1 A. Yeah, I recognize that.

03:35PM 2 Q. That's a letter you received from Dr. Goodness?

03:35PM 3 A. Yes, it is.

03:35PM 4 Q. Dated four days after trial?

03:35PM 5 A. Yes, ma'am.

03:35PM 6 Q. She thought very highly of your representation

03:35PM 7 as well as George's?

03:35PM 8 A. That's what she said.

03:35PM 9 Q. Did she ever say anything else?

03:35PM 10 A. No.

03:35PM 11 Q. Nothing contrary to that?

03:35PM 12 A. Well, I don't know.

03:35PM 13 Q. Well, to you?

03:35PM 14 A. There's a lot that can be said behind your

03:35PM 15 back.

03:35PM 16 Q. Did she complain to you?

03:35PM 17 A. No, she didn't complain to me.

03:35PM 18 Q. You have spoken with writ counsel before this

03:35PM 19 hearing today.

03:35PM 20 A. Yes. I spoke with them this week. I went by

03:35PM 21 their office to look at -- to see what questions they

03:36PM 22 were going to ask. I was aware -- I'm aware -- having

03:36PM 23 had a copy of the amended writ, I knew what I was going

03:36PM 24 to get grilled on.

03:36PM 25 Mr. Anton and I went to law school

03:36PM 1 together, graduated in the same class. We know each  
03:36PM 2 other. That being said, I told him I understood he was  
03:36PM 3 going to come at me with hammers and tongs. I told him  
03:36PM 4 do what he had to do. I would deal with it as it came.

03:36PM 5 This is a writ hearing. I don't have  
03:36PM 6 anything to hide and I understand how he's trying to  
03:36PM 7 present things. And I'm the trial lawyer. I understand  
03:36PM 8 how that goes and I understand what your job is. I  
03:36PM 9 understand what everybody's job is.

03:36PM 10 I told him there wasn't going to be any  
03:36PM 11 hard feelings or mad at anybody asking me hard questions  
03:36PM 12 or telling me what I was supposed to do or should have  
03:36PM 13 done or would have done. That being said, I asked to  
03:36PM 14 see a copy of the medical report from the doctor in  
03:37PM 15 Colorado because I couldn't recall whether or not there  
03:37PM 16 was something in the medical report that we were shy  
03:37PM 17 about as defense counsel.

03:37PM 18 I asked -- he asked me whether or not I had  
03:37PM 19 any handwritten notes of my initial interview in  
03:37PM 20 Colorado with Mr. Halprin, Randy. I told him I did. He  
03:37PM 21 had his secretary go down and start digging through and  
03:37PM 22 brought up some Xerox copies of my file.

03:37PM 23 I can't remember who got my file first, if  
03:37PM 24 it was the defense or the State. Anyway, I turned my  
03:37PM 25 file over, looked through that to refresh my

03:37PM 1 recollection. I didn't really need to refresh it.

03:38PM 2 That issue was whether or not Randy ever  
03:38PM 3 said he had shot himself. I didn't need to look through  
03:38PM 4 there to refresh my recollection on that. What else was  
03:38PM 5 there? Other than that, other than review what was in  
03:38PM 6 my file, I was tendered this list by Mr. Udashen.

03:38PM 7 I was tendered a response that was filed in  
03:38PM 8 court of some document and I can't remember. It was  
03:38PM 9 multi pages. I don't remember what the name of it was.  
03:38PM 10 I have got it in the car and would be glad to run down  
03:38PM 11 and get it.

03:38PM 12 Q. That's okay.

03:38PM 13 A. Mr. Anton asked me questions pertaining to the  
03:38PM 14 writ. "Why did you do this?" I essentially answered  
03:38PM 15 them the same way I have today. Or "What was your  
03:38PM 16 thinking," or asked me specifically -- I think he  
03:38PM 17 specifically asked me did George and I ever have any  
03:39PM 18 conversation or did I ever tell George that Randy said  
03:39PM 19 he shot himself and I told him no, we never had that  
03:39PM 20 conversation. I was probably there 30, 40 minutes.

03:39PM 21 Q. Okay. You gave an affidavit to writ counsel  
03:39PM 22 back in 2005, didn't you, in support of the writ claim?

03:39PM 23 A. Yes.

03:39PM 24 Q. In support of one of the claims, the Brady  
03:39PM 25 claims; is that correct?

03:39PM 1 A. That's correct.

03:39PM 2 Q. You didn't address the ineffectiveness  
03:39PM 3 allegations back then?

03:39PM 4 A. No.

03:39PM 5 Q. Why was that?

03:39PM 6 A. I don't know.

03:39PM 7 Q. You didn't want to respond to them or they  
03:39PM 8 didn't ask you?

03:39PM 9 A. Well, I'm sure everybody wanted me to respond  
03:39PM 10 to something. I probably shoved it off on something  
03:39PM 11 else until I had time to get to it.

03:39PM 12 THE COURT: Let me ask you a question. If  
03:39PM 13 this Court were to make conclusions of law and  
03:39PM 14 recommendations that you were ineffective and the Court  
03:40PM 15 of Criminal Appeals were to follow that recommendation  
03:40PM 16 and made a determination that you were ineffective what  
03:40PM 17 impact would that have on you?

03:40PM 18 THE WITNESS: Well, Judge --

03:40PM 19 THE COURT: Other than hurting your  
03:40PM 20 feelings.

03:40PM 21 THE WITNESS: It would remove me from the  
03:40PM 22 list of individuals who can represent death penalty --  
03:40PM 23 people facing the death penalty is my understanding of  
03:40PM 24 how that would be treated.

03:40PM 25 THE COURT: What percent of your practice

03:40PM 1 do you think that's been in the last five years?

03:40PM 2 THE WITNESS: Well, I have got two pending  
03:40PM 3 right now but I haven't had a -- other than Randy's  
03:40PM 4 case, I haven't had a capital murder case be tried for  
03:41PM 5 death since Mr. Halprin, I don't think. I'm trying to  
03:41PM 6 remember. That would be 2003. I think everybody else  
03:41PM 7 they forewent the death penalty and tried them as a mini  
03:41PM 8 cap.

03:41PM 9 THE COURT: But you wouldn't have been able  
03:41PM 10 to be appointed on those cases?

03:41PM 11 THE WITNESS: I'm not clear --

03:41PM 12 THE COURT: Is that your understanding?

03:41PM 13 THE WITNESS: I'm not clear as to that. I  
03:41PM 14 don't know what that means. I don't know if that means  
03:41PM 15 I'm completely removed from the appointment list of  
03:41PM 16 Dallas County. I don't know if that means I'm  
03:41PM 17 removed -- I know it means I'm removed from any death  
03:41PM 18 case. I don't know if that means I'm removed from any  
03:41PM 19 non-death case. I don't know.

03:41PM 20 THE COURT: It's a bad thing, isn't it?

03:41PM 21 THE WITNESS: It's not a good thing.

03:41PM 22 Nobody wants to be held ineffective.

03:41PM 23 THE COURT: Go ahead.

03:41PM 24 Q. (By Ms. Smith) Do you remember coming up to the  
03:41PM 25 appellate section a few years ago and speaking very

03:41PM 1 briefly with myself and a co-worker Libby Lane?

03:41PM 2 A. Yes, ma'am. I recall that. I recall that,  
03:42PM 3 yeah.

03:42PM 4 Q. We didn't discuss the specifics of the  
03:42PM 5 allegations in the writ. We briefly met and spoke.

03:42PM 6 A. That's correct.

03:42PM 7 Q. You asked me for a copy of the record. Do you  
03:42PM 8 remember that?

03:42PM 9 A. Might have. I don't recall that but that  
03:42PM 10 doesn't mean I didn't ask for it.

03:42PM 11 Q. You don't remember getting a disk from me in  
03:42PM 12 the mail with the record on it?

03:42PM 13 A. I very well may have. I probably did.

03:42PM 14 Q. Since then we have spoken in passing just here  
03:42PM 15 and there and we have talked about you come in and talk  
03:42PM 16 and you said yeah. We have never sat down and talked,  
03:42PM 17 have we?

03:42PM 18 A. No, ma'am.

03:42PM 19 Q. Your request last year, I made the D. A. trial  
03:42PM 20 files available to you for review.

03:42PM 21 A. Yes, ma'am.

03:42PM 22 Q. You haven't been upstairs to look at them.

03:42PM 23 A. No, ma'am. I didn't go back and dig through  
03:42PM 24 them.

03:42PM 25 Q. September of '09 we made an appointment for you

03:42PM 1 to come upstairs and do that very thing and you  
03:42PM 2 cancelled on me the morning of, didn't you?

03:42PM 3 A. Yes.

03:42PM 4 Q. The Court has ordered you not once, but twice  
03:43PM 5 to answer interrogatories filed by the defense. Were  
03:43PM 6 you aware of that?

03:43PM 7 A. Yes.

03:43PM 8 Q. But you haven't answered the interrogatories.  
03:43PM 9 Can you tell me why?

03:43PM 10 A. I thought this was -- the purpose of the  
03:43PM 11 interrogatories were having the live hearing.

03:43PM 12 Q. You preferred the live hearing rather than  
03:43PM 13 answering the questions?

03:43PM 14 A. No, no. My understanding was that there was  
03:43PM 15 going to be an evidentiary hearing.

03:43PM 16 Q. No point in answering them?

03:43PM 17 A. Yeah, essentially.

03:43PM 18 Q. Okay. Just briefly --

03:43PM 19 THE COURT: Now, Judge, would you have let  
03:43PM 20 me get away with that?

03:43PM 21 THE WITNESS: Probably.

03:43PM 22 Q. (By Ms. Smith) Now, let's just briefly go over  
03:43PM 23 your qualifications. I don't want to belabor the point.  
03:43PM 24 You've been licensed since 1979.

03:43PM 25 A. Yes, ma'am.



03:43PM 1 Q. You're licensed to practice in federal court as  
03:44PM 2 well.

03:44PM 3 A. Yes, ma'am, in the Northern, Eastern, Western  
03:44PM 4 district courts and United States District Court of  
03:44PM 5 Appeals in New Orleans.

03:44PM 6 Q. At the time of Mr. Halprin's trial you had been  
03:44PM 7 licensed to practice for 24 years?

03:44PM 8 A. Yes, ma'am.

03:44PM 9 Q. You're board certified in criminal law and have  
03:44PM 10 been since 1985.

03:44PM 11 A. Yes, ma'am.

03:44PM 12 Q. You're a former district court judge in Dallas  
03:44PM 13 County.

03:44PM 14 A. Yes, ma'am.

03:44PM 15 Q. Did you preside over any death penalty trials  
03:44PM 16 when you were a judge?

03:44PM 17 A. Yes, ma'am.

03:44PM 18 Q. Do you recall which ones?

03:44PM 19 A. Yes. I can recall the face. Julius Whittier  
03:44PM 20 was the defense lawyer, Bruce Anton either second chair  
03:44PM 21 on that case or --

03:44PM 22 Q. Kenneth Wayne Thomas?

03:44PM 23 A. Yes, ma'am, I believe it was.

03:44PM 24 MR. ANTON: Robert Newton.

03:44PM 25 A. I apologize. That was the car wash shooting

03:44PM 1 with the piece of jewelry.

03:44PM 2 Q. (By Ms. Smith) You have presided over other  
03:44PM 3 death penalty related proceedings, haven't you, ordered  
03:45PM 4 an execution?

03:45PM 5 A. Yes, ma'am. I have ordered an execution of an  
03:45PM 6 inmate.

03:45PM 7 Q. And you were at the time of Mr. Halprin's trial  
03:45PM 8 and you still are on the list of attorneys approved to  
03:45PM 9 represent death penalty defendants in Dallas County,  
03:45PM 10 aren't you?

03:45PM 11 A. Yes, ma'am. I currently have two death penalty  
03:45PM 12 cases pending.

03:45PM 13 THE COURT: One is in this court, I  
03:45PM 14 believe; is that correct?

03:45PM 15 THE WITNESS: That's correct, Your Honor.

03:45PM 16 Q. (By Ms. Smith) As you have noted, there are  
03:45PM 17 certain requirements for you to be on that list.

03:45PM 18 A. Yes, ma'am.

03:45PM 19 Q. You haven't been found ineffective is one of  
03:45PM 20 them.

03:45PM 21 A. That's one.

03:45PM 22 Q. You got to keep up certain CLE hours.

03:45PM 23 A. Yes, ma'am.

03:45PM 24 Q. You have never been found ineffective before,  
03:45PM 25 correct, in a death penalty case?

03:45PM 1 A. Not in a death penalty case. The only time  
03:45PM 2 I've been found ineffective is when I went through my  
03:45PM 3 first divorce. I missed a notice of appeal deadline. I  
03:45PM 4 filed a motion with the court telling them I missed a  
03:45PM 5 deadline; it was my fault.

03:45PM 6 The Court granted an extension for us to  
03:45PM 7 file notice of appeal and said I was ineffective. That  
03:46PM 8 was probably in 1981 or 82 or somewhere in there. I  
03:46PM 9 can't remember which divorce that was.

03:46PM 10 Q. I won't go there if you don't mind. In any  
03:46PM 11 event, Mr. Halprin was not your first death penalty  
03:46PM 12 client, was he?

03:46PM 13 A. No, no. Matter of fact, I had represented  
03:46PM 14 Gaylon Bradford with Paul Brauchle, death penalty case  
03:46PM 15 that he had video of the shooting where Mr. Bradford  
03:46PM 16 walks in and shoots him in the back and leans over and  
03:46PM 17 shoots him again.

03:46PM 18 Q. Did that get reversed based on error you  
03:46PM 19 preserved?

03:46PM 20 A. That's correct.

03:46PM 21 THE COURT: Let the record reflect although  
03:46PM 22 this witness may not recall, that's when I met this  
03:46PM 23 witness was when I was observing that trial in Keith  
03:46PM 24 Dean's court.

03:46PM 25 A. I also suspect they're not going to be able to

03:46PM 1 execute him. We established he was mentally retarded.  
03:46PM 2 Under the IQ guidelines that the Supreme Court has now  
03:47PM 3 says that you can't execute. He was a 68 or 69. That's  
03:47PM 4 in the record and has been for some period of time.

03:47PM 5 Q. (By Ms. Smith) Litigated the MR claim and  
03:47PM 6 decided against him and he's set for execution. Let's  
03:47PM 7 move on to Paul Emilien. That was back in 2007,  
03:47PM 8 correct?

03:47PM 9 A. That's correct.

03:47PM 10 Q. Then you -- didn't you negotiate that case from  
03:47PM 11 a death penalty to a life sentence?

03:47PM 12 A. That's correct. I forgot about that.

03:47PM 13 Q. Ms. Schaefer, my co-counsel, worked with you on  
03:47PM 14 that, didn't she?

03:47PM 15 A. Yes.

03:47PM 16 Q. Charles -- you're currently on Charles Payne,  
03:47PM 17 Charles Payne who killed a police officer.

03:47PM 18 THE COURT: Allegedly.

03:47PM 19 Q. (By Ms. Smith) And Michael Turner?

03:47PM 20 A. Allegedly.

03:47PM 21 Q. You were appointed on Mr. Halprin's case right  
03:47PM 22 after he got captured; is that correct?

03:47PM 23 A. That's correct.

03:48PM 24 Q. Technically you were second chair. You said  
03:48PM 25 you guys divided the responsibilities pretty evenly,

03:48PM 1 right?

03:48PM 2 A. Yeah. I mean I don't know that they were  
03:48PM 3 divided evenly but they were kind of divided up.

03:48PM 4 Q. You shared the load?

03:48PM 5 A. Yes. We shared it. We tried to split it up so  
03:48PM 6 we weren't somebody -- my experience is when you do  
03:48PM 7 death penalty you try to split up the obligations or  
03:48PM 8 what you are trying to do.

03:48PM 9 Q. Didn't you go to Colorado right after the  
03:48PM 10 capture to interview Mr. Halprin?

03:48PM 11 A. Certainly did. I saw Mr. Halprin in Colorado  
03:48PM 12 when they still had him incarcerated up there before the  
03:48PM 13 extradition hearing.

03:48PM 14 Q. You got his story from him then?

03:48PM 15 A. Yes, ma'am.

03:48PM 16 Q. Hadn't he talked to some media by the time you  
03:48PM 17 got there?

03:48PM 18 A. Yes, ma'am. He had given a televised  
03:48PM 19 interview. I forget what -- to whom. CBS, ABC, CNN. I  
03:49PM 20 don't remember who it was. They had allowed media  
03:49PM 21 access up there. Taylor County Sheriff's Office that  
03:49PM 22 allowed the media access, something which always  
03:49PM 23 surprises me.

03:49PM 24 Q. You advised him not to make statements to the  
03:49PM 25 media when you saw him.

03:49PM 1 A. Certainly did.

03:49PM 2 Q. Did he take your advice?

03:49PM 3 A. Well, I don't know. I'm trying to remember if  
03:49PM 4 he gave any other media interviews after that point in  
03:49PM 5 time.

03:49PM 6 Q. Didn't he have an interview with Jay Bromley,  
03:49PM 7 one of the local reporters in Dallas?

03:49PM 8 A. He may have. I don't recall.

03:49PM 9 Q. Recall a Newsweek article?

03:49PM 10 A. He may have. I don't recall.

03:49PM 11 Q. You said that you got access to all the records  
03:49PM 12 from the co-defendants cases that had already been  
03:49PM 13 tried.

03:49PM 14 A. I believe so.

03:49PM 15 Q. And you handled the pretrial motions in this  
03:49PM 16 case, didn't you?

03:49PM 17 A. I believe I did.

03:49PM 18 Q. You incorporated all the pretrial motions that  
03:49PM 19 had been filed by all the other defense attorneys in all  
03:49PM 20 the other trials, didn't you?

03:50PM 21 A. I believe I did.

03:50PM 22 Q. I believe I met you in the clerk's office when  
03:50PM 23 you were making copies of those. Do you remember that?

03:50PM 24 A. I believe that happened.

03:50PM 25 Q. By the time Mr. Halprin's trial came around you

03:50PM 1 had a preview of the State's case, didn't you?

03:50PM 2 A. Oh, yeah.

03:50PM 3 Q. What was your opinion of that case?

03:50PM 4 THE COURT: Can you be more specific?

03:50PM 5 Q. (By Ms. Smith) On the issue of guilt what was  
03:50PM 6 your opinion of the State's case?

03:50PM 7 A. On the issue of guilt -- I'm not sure I can  
03:50PM 8 answer that question just succinctly on the issue of  
03:50PM 9 guilt. Was it bad facts? Yeah, it was bad facts.  
03:50PM 10 Seven guys escaping from prison, holding handmade  
03:50PM 11 weapons to people, taking guns, disappearing, committing  
03:50PM 12 armed robberies while they're out and then ultimately  
03:50PM 13 winding up in Irving and killing a police officer.  
03:50PM 14 Those are not good facts.

03:50PM 15 Q. Not for you?

03:50PM 16 A. Not for any defense lawyer. That being said,  
03:51PM 17 whether or not that made Randy guilty of capital murder,  
03:51PM 18 I don't think all of those facts make him guilty of  
03:51PM 19 capital murder. That's what the issues are for. That's  
03:51PM 20 what the burden of proof is for.

03:51PM 21 Certainly, certainly the issues pertaining  
03:51PM 22 to did he have a weapon at the time, did that help him  
03:51PM 23 or hurt him? It certainly didn't help him. It  
03:51PM 24 certainly hurt him. Being a part of this group, did it  
03:51PM 25 help him or hurt him? It certainly hurt him.

03:51PM 1 Escaping from police, did that help or hurt  
03:51PM 2 him? It hurt him. Committing other aggravated  
03:51PM 3 robberies while in the course of trying to flee, did  
03:51PM 4 that help him or hurt him? Certainly it hurt him.  
03:51PM 5 There weren't very many good facts to be gleaned, any of  
03:51PM 6 this.

03:51PM 7 Randy's prior criminal history wasn't -- it  
03:51PM 8 wasn't lengthy and long with a long history of violence  
03:52PM 9 but he had one case that was a bad case, the child case  
03:52PM 10 out of Tarrant County. That wasn't good.

03:52PM 11 Q. You had your work cut out for you, didn't you?

03:52PM 12 A. Certainly.

03:52PM 13 Q. Wasn't going to be easy. You thought you had  
03:52PM 14 something to work with, right?

03:52PM 15 A. You always think you have something to work  
03:52PM 16 with.

03:52PM 17 THE COURT: Let's move on. I might as well  
03:52PM 18 state I was in this building working along with all of  
03:52PM 19 y'all when these cases were going on and there was no  
03:52PM 20 question. It was the talk of the building and the fact  
03:52PM 21 these guys were, quote, poster children for the death  
03:52PM 22 penalty, unquote. That's pretty much what the  
03:52PM 23 atmosphere was. I get it.

03:52PM 24 Q. (By Ms. Smith) I'll move on.

03:52PM 25 A. Did I think we had a shot at winning it? I



03:52PM 1 think I have a shot at winning every case.

03:52PM 2 Q. You kept them deliberating for six hours on  
03:52PM 3 punishment, didn't you?

03:52PM 4 A. Yeah.

03:53PM 5 Q. Overnight?

03:53PM 6 A. I thought we had a shot of hanging them up on  
03:53PM 7 that.

03:53PM 8 Q. You said that Mr. Halprin was primarily your  
03:53PM 9 responsibility as far as developing him as a witness; is  
03:53PM 10 that correct?

03:53PM 11 A. I put him on.

03:53PM 12 Q. He testified at guilt, right?

03:53PM 13 A. Right.

03:53PM 14 Q. Was there a plan for him to testify at  
03:53PM 15 punishment?

03:53PM 16 A. Well, I never make that decision prior to the  
03:53PM 17 trial. I don't make that decision necessarily on the  
03:53PM 18 guilt-innocence phase until I get to that point in time  
03:53PM 19 where you don't have anybody else to put on and you're  
03:53PM 20 trying to decide your defendant is going to put on. You  
03:53PM 21 prepare people for it but you may do it; you may not do  
03:53PM 22 it.

03:53PM 23 Now, we discussed testifying with Randy.  
03:53PM 24 Randy decided he wanted to testify in his own behalf.  
03:53PM 25 We put him on the witness stand. He testified.

03:53PM 1 Punishment phase came up. I think the general consensus  
03:53PM 2 between George and I was he didn't do well on the  
03:54PM 3 witness stand during guilt. Don't give Toby another  
03:54PM 4 shot at him on punishment. We discussed that with Randy  
03:54PM 5 and Randy advised us he didn't want to testify in  
03:54PM 6 punishment.

03:54PM 7 Q. He knew he had a right to testify in  
03:54PM 8 punishment?

03:54PM 9 A. Yeah.

03:54PM 10 Q. There's no doubt about that?

03:54PM 11 A. There's not any doubt about that, no.

03:54PM 12 Q. The decision to testify was his alone, wasn't  
03:54PM 13 it?

03:54PM 14 A. It's always the defendant's decision.

03:54PM 15 THE COURT: Can we move on?

03:54PM 16 Q. (By Ms. Smith) You've been asked about why you  
03:54PM 17 didn't object to Mr. Shook's cross-examination of Randy.  
03:54PM 18 Wasn't your strategy when you put him on on direct to  
03:54PM 19 portray him as somebody who wouldn't have killed  
03:54PM 20 anybody, just got in with the wrong crowd, he's a sad,  
03:54PM 21 pitiful character who is not very bright? Am I being  
03:55PM 22 inaccurate in any way?

03:55PM 23 A. No. We were certainly trying to portray him as  
03:55PM 24 the least culpable of any of the individuals. He wasn't  
03:55PM 25 down there for -- he was down there for engaging in some

03:55PM 1 conduct that by all purposes he was under the influence  
03:55PM 2 of LSD at the time it took place which was an injury to  
03:55PM 3 a child case.

03:55PM 4 The injuries was bad. He was very young at  
03:55PM 5 the time. I believe he was 18 when that offense took  
03:55PM 6 place. He was living in a homeless shelter for a while.  
03:55PM 7 His parents kicked him out. There was all kinds of  
03:55PM 8 other things.

03:55PM 9 The problems -- Randy -- certainly Randy  
03:55PM 10 was and still is in my opinion the least culpable of any  
03:55PM 11 of the individuals that escaped from prison. That's how  
03:55PM 12 we tried to present it.

03:55PM 13 Q. Clearly, it wasn't just his character as a  
03:55PM 14 truth teller that was at issue in his testimony. It was  
03:56PM 15 also whether or not he was the kind of person that would  
03:56PM 16 have murdered anybody, correct?

03:56PM 17 A. Certainly.

03:56PM 18 Q. There were aspects to his testimony that  
03:56PM 19 related to his character specifically, didn't they?

03:56PM 20 A. Oh, you know what? I don't know without  
03:56PM 21 reading the whole transcript of my direct of him. I  
03:56PM 22 honestly don't remember.

03:56PM 23 Q. You brought out one of the -- one of the issues  
03:56PM 24 that came up during cross, he wrote the letter writing  
03:56PM 25 about how he was trying to manipulate the jury about

03:56PM 1 wearing glasses and how he was dressed.

03:56PM 2 A. I believe he did that. I don't have a clear  
03:56PM 3 reaction. That's something I would do to diffuse  
03:56PM 4 something.

03:56PM 5 Q. Mr. Shook brought it out on cross. You  
03:56PM 6 mentioned it earlier today.

03:56PM 7 A. Right.

03:56PM 8 Q. Clearly, Mr. Shook was trying to not only  
03:56PM 9 attack his credibility as a witness, he was also trying  
03:57PM 10 to refute the character that you had tried to portray  
03:57PM 11 him as on direct, wasn't he?

03:57PM 12 A. I don't know what Mr. Shook was doing. Is that  
03:57PM 13 a reasonable explanation of what he was doing? Sure.  
03:57PM 14 I'm sure it is.

03:57PM 15 Q. Didn't you on direct try to establish that  
03:57PM 16 there was a reason for the prior conviction, the prior  
03:57PM 17 injury to a child case, that Randy was on drugs, he  
03:57PM 18 flipped out?

03:57PM 19 A. Yeah, I recall doing that.

03:57PM 20 Q. You brought out through Randy that he had been  
03:57PM 21 adopted and lived with these adoptive parents, sent off  
03:57PM 22 to school. You brought all of that out on direct.

03:57PM 23 A. Yes, ma'am. I believe I did.

03:57PM 24 Q. You injected mitigation into the guilt phase of  
03:57PM 25 trial, didn't you?

03:57PM 1 A. Tried to.

03:57PM 2 Q. Those weren't relevant to guilt, were they?

03:57PM 3 A. I don't know. They might be.

03:57PM 4 Q. You were trying to head it off at the pass,  
03:57PM 5 weren't you?

03:57PM 6 A. Trying to win.

03:57PM 7 Q. Okay.

03:57PM 8 A. Trying to put him in the best light possible  
03:57PM 9 based on the facts and circumstances.

03:57PM 10 Q. When Mr. Shook started cross-examining him with  
03:58PM 11 the letters and continued to cross-examine him with the  
03:58PM 12 letters were you surprised that Mr. Shook had read every  
03:58PM 13 single one of those letters?

03:58PM 14 A. No. I know Mr. Shook. I have dealt with Mr.  
03:58PM 15 Shook over a number of years. He's got a great memory.  
03:58PM 16 He's got a great mind.

03:58PM 17 Q. He read every single one of those letters, not  
03:58PM 18 knowing if Mr. Halprin was going to testify, didn't he?

03:58PM 19 A. I don't know what he did. I don't know if Mr.  
03:58PM 20 Shook read every one of the letters. I don't have  
03:58PM 21 personal knowledge of that. If he did that, that  
03:58PM 22 wouldn't surprise me.

03:58PM 23 Q. Appeared to have a very good grasp of what was  
03:58PM 24 in the letters, didn't he?

03:58PM 25 A. Oh, yes.

03:58PM 1 Q. Do you recall how you tried to deal with how  
03:58PM 2 badly Mr. Halprin did on cross when you got him back on  
03:58PM 3 redirect?

03:58PM 4 A. Not without reading the transcript, honestly,  
03:58PM 5 no. I'm sure I tried to patch it up somehow.

03:59PM 6 Q. You remember offering all sort of letters he  
03:59PM 7 wrote?

03:59PM 8 A. Yeah, I do. I remember that.

03:59PM 9 Q. You made a big show of them, stacked them up in  
03:59PM 10 the middle of the courtroom?

03:59PM 11 A. Yes, ma'am, I did. I remember that now. Sure  
03:59PM 12 did. Had them in binders, separated out in binders and  
03:59PM 13 offered them all.

03:59PM 14 Q. Correct me if I'm wrong. It's been a while.  
03:59PM 15 Maybe four, five, six of those big binders?

03:59PM 16 A. Yes, ma'am, quite a few letters.

03:59PM 17 Q. You used his poor performance on cross to  
03:59PM 18 further your defensive theory this guy wasn't very  
03:59PM 19 bright.

03:59PM 20 A. That's true. Trying to portray him as the low  
03:59PM 21 man on the totem pole.

03:59PM 22 Q. You even argued that Mr. Shook -- Mr. Halprin  
03:59PM 23 thought he could take on Mr. Shook, the seasoned  
03:59PM 24 prosecutor. That shows you exactly how dumb he really  
03:59PM 25 is. Do you recall that?

03:59PM 1 A. I don't recall that. I may have said that. I  
03:59PM 2 have to go back through the transcript of the record,  
04:00PM 3 the statement of facts to see what I said. I honestly  
04:00PM 4 don't recall.

04:00PM 5 Q. Were you surprised by how poorly he performed  
04:00PM 6 on cross?

04:00PM 7 A. No, I'm not surprised. I'm not surprised when  
04:00PM 8 any defendant does poorly on cross. It's one thing to  
04:00PM 9 go over testimony in a jail cell and do that. It's  
04:00PM 10 another thing to hit the witness stand and watch  
04:00PM 11 somebody go off on some tangent you haven't heard about  
04:00PM 12 yet.

04:00PM 13 Q. You tried to prepare him for cross.

04:00PM 14 A. Certainly you prepare people for cross. That  
04:00PM 15 doesn't mean they do what they have done in the past.  
04:00PM 16 You take it as it comes. Sometimes it's completely  
04:00PM 17 removed from what you have been planning.

04:00PM 18 Q. Do you remember during your direct examination  
04:00PM 19 of him when he asked the Judge to tell the prosecutors  
04:01PM 20 to stop looking at him?

04:01PM 21 A. I remember him asking the Judge that.

04:01PM 22 Q. Were you a little taken aback by that?

04:01PM 23 A. I didn't think it was helpful.

04:01PM 24 Q. How do you think it made him look?

04:01PM 25 A. Childish.

04:01PM 1 Q. In that sense didn't it sort of help your  
04:01PM 2 defensive theory?

04:01PM 3 A. Well, I don't know. Might have. Once again,  
04:01PM 4 you try to take what occurs and explain it in the light  
04:01PM 5 most favorable to your position. I would have described  
04:01PM 6 it as being naive, unsophisticated.

04:01PM 7 Q. Let's talk a little bit about your strategy in  
04:01PM 8 dealing with evidence you couldn't get in, namely, some  
04:02PM 9 oral statements by the co-defendants that you were asked  
04:02PM 10 about on direct examination here today, in particular  
04:02PM 11 statements that Newbury, Rodriguez and Murphy told law  
04:02PM 12 enforcement, oral statements that you didn't offer in  
04:02PM 13 guilt.

04:02PM 14 Now, do you recall Rodriguez and Murphy  
04:02PM 15 telling a couple of FBI agents that Halprin didn't fire  
04:02PM 16 a gun at the offense?

04:02PM 17 A. I recall that.

04:02PM 18 Q. It came in through Rodriguez' and Murphy's  
04:02PM 19 confessions which you admitted, didn't it?

04:02PM 20 A. Without seeing them, I can't tell you that.  
04:02PM 21 That very well may have been. Once again, I don't  
04:02PM 22 recall. I don't have a clear recollection of the  
04:02PM 23 specifics of what was in the confessions.

04:02PM 24 Q. It's been a long, long time, hasn't it?

04:02PM 25 A. Seven years.



04:02PM 1 Q. That affected your memory on this a little bit?

04:02PM 2 A. It reflects -- yeah, my recollection of  
04:03PM 3 specific pieces of evidence. I don't have Toby's  
04:03PM 4 photographic memory, I guess.

04:03PM 5 Q. So I hear about Toby, not you. Toby's --

04:03PM 6 A. I guess that doesn't say much for me.

04:03PM 7 Q. Do you recall by chance cross-examining  
04:03PM 8 Detective Spivey who was the lead detective on this case  
04:03PM 9 about Murphy's statement and getting it in through him?

04:03PM 10 A. I recall that. I don't know -- once again, I'm  
04:03PM 11 trying to recall the substance of Murphy's statement  
04:03PM 12 through Spivey. Without reading it specifically, I  
04:03PM 13 can't remember the specifics of it. I know I attempted  
04:03PM 14 to get that information out in the presence of the jury  
04:03PM 15 through a variety of witnesses.

04:03PM 16 Q. You didn't get these oral statements in through  
04:03PM 17 the notes of the officers who took them or the officers  
04:03PM 18 themselves but you did get the statements in, just  
04:03PM 19 another way, right?

04:03PM 20 THE COURT: Did he?

04:03PM 21 A. If I did, I did. If I didn't, I didn't.

04:04PM 22 Q. (By Ms. Smith) I'll move on.

04:04PM 23 A. Just tell you. I don't remember. I apologize  
04:04PM 24 for not having re-read the entire trial transcript  
04:04PM 25 before coming here.

04:04PM 1 Q. That's okay. I'll move on.

04:04PM 2 THE COURT: It's a long read.

04:04PM 3 THE WITNESS: Yes, Your Honor. I'm sure it  
04:04PM 4 is.

04:04PM 5 Q. (By Ms. Smith) Not being able to offer, say,  
04:04PM 6 the co-defendants' statement in or the ranking document  
04:04PM 7 in itself really didn't stop you from putting that in  
04:04PM 8 front of the jury, did it?

04:04PM 9 A. Well, you know, the co-defendants' statements  
04:04PM 10 are one thing. The co-defendants' statements are not  
04:04PM 11 necessarily of the same weight and value of a ranking  
04:04PM 12 document. I got to tell you that putting on -- calling  
04:04PM 13 Newbury or Murphy or Rivas or any of the other guys had  
04:04PM 14 no real value in the defense of Randy just because they  
04:04PM 15 were subject to so much cross-examination and damage.

04:04PM 16 I mean you just -- you're trying to  
04:05PM 17 separate Randy from that group, not tie him to that  
04:05PM 18 group. And by them wanting to help him by testifying or  
04:05PM 19 whatever, first of all, you know, truth-tellers they  
04:05PM 20 weren't. The ranking document is different.

04:05PM 21 The ranking document is law enforcement's  
04:05PM 22 perception of who Randy Halprin is. That's completely  
04:05PM 23 different. That's of different value.

04:05PM 24 Q. We'll get to that.

04:05PM 25 A. All right.

04:05PM 1 Q. You throughout trial injected information into  
04:05PM 2 your questions, two questions that you were otherwise  
04:05PM 3 unable to get into evidence, didn't you?

04:05PM 4 A. I'm known to do that. Yes, ma'am.

04:05PM 5 Q. Just a little?

04:05PM 6 A. Just a little.

04:05PM 7 Q. In fact Mr. Shook repeatedly objected to you  
04:05PM 8 doing that throughout the trial, didn't he?

04:05PM 9 A. I recall Mr. Shook making some objections, yes,  
04:05PM 10 ma'am.

04:05PM 11 Q. Didn't he ask the Judge to instruct you to stop  
04:05PM 12 doing it at one point?

04:06PM 13 A. I'm sure that was helpful and I'm sure he did.

04:06PM 14 Q. Didn't stop you?

04:06PM 15 A. I don't remember. I would have obeyed any  
04:06PM 16 instruction from the Court.

04:06PM 17 Q. Do you recall having a bench conference after  
04:06PM 18 that at which Mr. Shook turned to you and asked you  
04:06PM 19 please to stop doing it?

04:06PM 20 A. Well, that might have happened. I don't recall  
04:06PM 21 somebody asking me "please."

04:06PM 22 Q. You think if he went to that length he was  
04:06PM 23 probably enormously frustrated with his efforts to stop  
04:06PM 24 you?

04:06PM 25 A. I can't answer.

04:06PM 1 THE COURT: Is Mr. Shook not known for  
04:06PM 2 saying "please"?

04:06PM 3 MS. SMITH: No. It's just that normally an  
04:06PM 4 objection suffices. It did not with Mr. King.

04:06PM 5 A. I must not have understood the specifics of the  
04:06PM 6 objection.

04:06PM 7 THE COURT: Mr. King and I have discussed  
04:06PM 8 this matter in the past. Let's move on.

04:06PM 9 Q. (By Ms. Smith) Regard to the foot wound  
04:06PM 10 evidence, I read the record, too. It looked to me like  
04:07PM 11 you got the medical records in related to Randy's foot.  
04:07PM 12 Do you not remember that?

04:07PM 13 A. Not really. I don't recall. I don't think  
04:07PM 14 that the entry wound was the issue. Once again, I have  
04:07PM 15 not seen the actual -- I have seen the doctor's  
04:07PM 16 affidavit. I'm familiar with what happened with the  
04:07PM 17 wound and I don't recall whether or not -- quite  
04:07PM 18 frankly, the wound happened one of two ways.

04:07PM 19 Either Randy actually discharges a weapon  
04:07PM 20 intentionally or it falls out of his pants. And Randy  
04:07PM 21 had told law enforcement the gun slipped down his pants.  
04:07PM 22 It could have hit the ground. It was a revolver. Could  
04:07PM 23 have hit the ground, shot sideways, blown through his  
04:07PM 24 toe.

04:07PM 25 He could have shot straight down, the

04:07PM 1 bullet fragmented, went through his toe. The bullet  
04:08PM 2 could have come from some other direction, hit the  
04:08PM 3 ground or gone through his toe. Either one is possible  
04:08PM 4 and there is no way to tell other than there wasn't any  
04:08PM 5 stippling on his foot to show it was a close contact  
04:08PM 6 wound, within a couple of feet.

04:08PM 7 That kind of removes Randy shooting himself  
04:08PM 8 but I think that was in the presentation of the jury.

04:09PM 9 Q. You brought out the fact that Halprin was shot  
04:09PM 10 in the crossfire through Detective Spivey's testimony  
04:09PM 11 and also through Halprin himself on direct examination.  
04:09PM 12 Do you recall that?

04:09PM 13 A. I'm sure I discussed that with Spivey. I know  
04:09PM 14 I brought that out with Randy. Yes, ma'am.

04:10PM 15 Q. You argued it in closing that he got shot in  
04:10PM 16 the crossfire.

04:10PM 17 A. Yes, ma'am.

04:10PM 18 Q. Didn't Mr. Shook concede that in his closing  
04:10PM 19 argument?

04:10PM 20 A. I don't recall. He may have. I honestly don't  
04:10PM 21 recall. The record will reflect whatever the final  
04:10PM 22 argument is. Once again, I don't have a clear  
04:10PM 23 recollection.

04:10PM 24 Q. Was it really a big bone of contention at trial  
04:10PM 25 whether he shot himself in the foot or shot in the

04:10PM 1 crossfire?

04:10PM 2 A. Well, shooting himself would indicate that he  
04:10PM 3 had pulled the trigger possibly. That's a little  
04:10PM 4 different than getting shot in the crossfire. The entry  
04:10PM 5 wound -- I'm trying to recall -- I don't recall what the  
04:10PM 6 medical report says, whether there was any debris from  
04:10PM 7 the road that was found inside the toe that made me  
04:10PM 8 nervous.

04:10PM 9 Q. It wasn't hotly contested by the State, was it?

04:10PM 10 A. Not the entry wound itself, no. It was clearly  
04:10PM 11 on the side of the toe, not the top. You would think if  
04:11PM 12 he shot himself in the toe, it would come from the top.  
04:11PM 13 I think I argued that.

04:11PM 14 Q. I want to talk to you briefly about this  
04:11PM 15 anti-parties instruction. When Mr. Anton is asking you  
04:11PM 16 why you didn't ask for an anti-parties instruction what  
04:11PM 17 kind of instruction do you think he's asking you about?

04:11PM 18 A. Oh, well, that he is asking me that -- under a  
04:11PM 19 parties charge if you agree to commit one felony and  
04:11PM 20 somebody else commits another felony in the course of  
04:11PM 21 committing a felony that should have been anticipated,  
04:11PM 22 then that individual can get found guilty of capital  
04:11PM 23 murder.

04:11PM 24 So a person in the guilt-innocence phase --  
04:11PM 25 a person that knows his co-defendant is going in a store

04:11PM 1 with a gun and the gun is loaded and the person has said  
04:12PM 2 something to the effect of "If anybody gets in my way  
04:12PM 3 I'm going to kill them," can certainly get found guilty  
04:12PM 4 of capital murder if they're just sitting in the car,  
04:12PM 5 even though they didn't intend to kill anybody. And  
04:12PM 6 sometimes even the facts may be less than that as far as  
04:12PM 7 should have anticipated.

04:12PM 8 Now, that being said, I suspect what he was  
04:12PM 9 referring to is some type of charge, "Now, in the  
04:12PM 10 event -- unless you believe beyond a reasonable doubt  
04:12PM 11 that Randy Halprin intended or did know that shooting or  
04:12PM 12 taking a life was part of this" -- I'm not phrasing it  
04:12PM 13 very well.

04:12PM 14 I haven't thought about it before walking  
04:12PM 15 in here today -- some charge -- I'm sure there's  
04:12PM 16 something in McClung's that's there.

04:12PM 17 Q. Did you think he was asking about why you  
04:13PM 18 didn't ask for some sort of converse instruction to the  
04:13PM 19 application paragraph in the guilt charge?

04:13PM 20 A. Yeah, I think so.

04:13PM 21 Q. What if he is talking about an instruction at  
04:13PM 22 punishment? Do you know what he might be referring to?

04:13PM 23 A. Then he would be referring to actual  
04:13PM 24 anticipation.

04:13PM 25 Q. Isn't the second special issue an anti-parties

04:13PM 1 instruction?

04:13PM 2 A. In some aspects it is. When you are talking  
04:13PM 3 about did he -- did he take the life or did he  
04:13PM 4 anticipate that a life would be taken.

04:13PM 5 Q. The jury got an anti-parties instruction?

04:13PM 6 A. The burden of proof is on the State to prove  
04:13PM 7 that he did anticipate. That's a burden of proof beyond  
04:13PM 8 a reasonable doubt.

04:13PM 9 Q. There's no need to ask for a second instruction  
04:13PM 10 that's already in the charge, right?

04:13PM 11 A. I don't know that I have asked for one in the  
04:13PM 12 past. I don't know that it's not a good practice to do  
04:14PM 13 that. There wasn't one in the Court's charge. I don't  
04:14PM 14 think that we thought it was necessary at the time.  
04:14PM 15 Otherwise, we probably would have asked for it.

04:14PM 16 Q. You've been asked why you didn't object to some  
04:14PM 17 closing argument by the prosecutor about telling the  
04:14PM 18 jury they should find him -- should answer the parties  
04:14PM 19 issue yes because he took a gun to the robbery. Is it  
04:14PM 20 possible that that argument they have referred you to is  
04:14PM 21 being taken out of context?

04:14PM 22 A. I don't know. I'd have to go back and re-read  
04:14PM 23 the whole argument. I mean once again --

04:14PM 24 Q. Wasn't asking the jury to disregard all the  
04:14PM 25 other facts that showed anticipation like the fact that



04:15PM 1 he is an escapee on the lam with six other guys  
04:15PM 2 committing robberies. He didn't say, "Disregard that.  
04:15PM 3 All you have to look for is he has got a gun and going  
04:15PM 4 to a robbery," did he?

04:15PM 5 A. I don't recall. I don't recall. He may not  
04:15PM 6 have.

04:15PM 7 Q. Probably didn't?

04:15PM 8 A. I don't know. Without re-reading it myself, I  
04:15PM 9 don't know.

04:15PM 10 Q. All right. Let's talk about the ranking  
04:15PM 11 document. You clearly have some strong feelings about  
04:15PM 12 it. Is that accurate?

04:15PM 13 A. Yeah.

04:15PM 14 Q. A little hot about it?

04:15PM 15 A. No.

04:15PM 16 Q. No? Really?

04:15PM 17 A. When I am hot you know I'm hot. This isn't  
04:15PM 18 hot.

04:15PM 19 Q. Okay.

04:15PM 20 A. Hot is after my wife chews on me. That's hot.

04:15PM 21 Q. You said that you hadn't seen Hank Whitman's  
04:15PM 22 affidavit about the ranking document.

04:15PM 23 A. No, I haven't. I don't recall seeing it. I  
04:15PM 24 don't think it was in anything that I saw. Is it in any  
04:16PM 25 of the writ documents?

04:16PM 1 Q. No, sir.

04:16PM 2 A. I should have taken the time to review the  
04:16PM 3 State's side of it but I didn't. Sorry.

04:16PM 4 Q. That's okay. My feelings aren't hurt.

04:16PM 5 A. They shouldn't be.

04:16PM 6 Q. Would you read the highlighted portion?

04:16PM 7 A. (Examines document).

04:17PM 8 Q. Having read the affidavit about what the  
04:17PM 9 document -- what information the document was supposed  
04:17PM 10 to relay, it wasn't exactly what you thought it was, was  
04:17PM 11 it?

04:17PM 12 A. No. I think it's exactly what I think it is.  
04:17PM 13 I'll tell you something. I got appointed as a special  
04:17PM 14 prosecutor down in El Paso back in 2006 -- 2006. At  
04:17PM 15 that time since I was on this court inquiry down there,  
04:17PM 16 I had all the powers of the El Paso assistant district  
04:17PM 17 attorneys.

04:17PM 18 Ranger Whitman -- I went and contacted him.  
04:17PM 19 I didn't -- I mean I went and talked to him, never  
04:17PM 20 talked to him about the Texas Seven, quiet frankly,  
04:17PM 21 although I think that came up in passing because I was  
04:18PM 22 asking him for assistance because I was investigating  
04:18PM 23 the El Paso Police Department. That's not a friendly  
04:18PM 24 thing to be doing in that part of the country.

04:18PM 25 I don't think -- I think the value of that

04:18PM 1 document is that if you know who has been interviewed  
04:18PM 2 and you know that they're giving information, there's  
04:18PM 3 exculpatory information, there's mitigating information  
04:18PM 4 in the reports that are being generated to make that  
04:18PM 5 document.

04:18PM 6 And, yes, I think that document  
04:18PM 7 specifically shows -- I understand what Mr. Whitman is  
04:18PM 8 saying in 2008 and I am sure he thinks everybody down in  
04:18PM 9 TDC is dangerous. That wouldn't surprise me. Certainly  
04:18PM 10 putting Mr. Halprin at that low end certainly is  
04:18PM 11 something that is helpful in a capital murder case.

04:18PM 12 Q. Certainly is but in reality --

04:19PM 13 A. That's not how Mr. Halprin was portrayed during  
04:19PM 14 the course of the trial. He was portrayed as clever and  
04:19PM 15 all this other stuff. And from what I garner from this  
04:19PM 16 report now, there was people saying he was dumb as a bag  
04:19PM 17 of hammers and those were TDCJ people. We got some of  
04:19PM 18 that in but it would have been nice to have more of that  
04:19PM 19 in.

04:19PM 20 Q. The document really doesn't place Randy dead  
04:19PM 21 last, does it?

04:19PM 22 A. I thought he did, yeah.

04:19PM 23 Q. He said the last three defendants in the  
04:19PM 24 ranking document, Garcia, Murphy and Halprin, were equal  
04:19PM 25 in leadership and --

04:19PM 1 THE COURT: Excuse me. Excuse me. We're  
04:19PM 2 getting into semantics. The document put him dead last.  
04:19PM 3 Another document generated on behalf of the State after  
04:19PM 4 the trial put him as the bottom three.

04:20PM 5 A. Ms. Smith, I'll tell you. Part of the  
04:20PM 6 problem --

04:20PM 7 THE COURT: Excuse me. Wait until the next  
04:20PM 8 question.

04:20PM 9 THE WITNESS: Thank you, Your Honor.

04:20PM 10 THE COURT: You may ask your next question.

04:20PM 11 Q. (By Ms. Smith) Do you think that Mr. Shook lied  
04:20PM 12 to you about he knew where the document came from?

04:20PM 13 A. I have a hard time understanding how nobody in  
04:20PM 14 the D. A.'s office has any knowledge of a document  
04:20PM 15 that's in a box of discovery that's separated. I don't  
04:20PM 16 know whose responsibility that was in the D. A.'s  
04:20PM 17 office.

04:20PM 18 Q. Mr. King --

04:20PM 19 A. But I tell you right now I don't believe for  
04:20PM 20 one minute that people weren't aware of who generated  
04:20PM 21 that document or where it came from.

04:20PM 22 Q. You keep saying "people in the D. A.'s office."  
04:20PM 23 Are you referring to Mr. Shook?

04:20PM 24 A. I'm referring to anybody in the D. A.'s office.

04:21PM 25 THE COURT: Excuse me. I think you need to

04:21PM 1 stand when you address the Court.

04:21PM 2 MR. ANTON: I don't care what kind of  
04:21PM 3 proceeding it is. No witness can pass upon the veracity  
04:21PM 4 of any witness.

04:21PM 5 THE COURT: Are you objecting to the  
04:21PM 6 question?

04:21PM 7 MR. ANTON: Yes.

04:21PM 8 THE COURT: Sustained.

04:21PM 9 A. I don't know whose responsibility --

04:21PM 10 THE COURT: Excuse me. I sustained the  
04:21PM 11 objection.

04:21PM 12 MR. KING: Apologize. I don't do well  
04:21PM 13 under pressure.

04:21PM 14 Q. (By Ms. Smith) Would it surprise you to find  
04:21PM 15 Mr. Whitman was never in contact with anybody from this  
04:21PM 16 D. A.'s office?

04:21PM 17 A. Oh, I find that surprising.

04:21PM 18 Q. Would you be surprised to find he was upset  
04:21PM 19 that nobody contacted him from this office?

04:21PM 20 A. I wouldn't find that surprising.

04:22PM 21 Q. Thank you, Mr. King.

04:22PM 22 MS. SMITH: Pass the witness.

04:22PM 23 A. Yes, ma'am.

04:22PM 24 MR. ANTON: We have no further questions.

04:22PM 25 THE COURT: Mr. King, I have some

04:22PM 1 questions.

04:22PM 2 THE WITNESS: Yes, sir.

04:22PM 3 EXAMINATION

04:22PM 4 BY THE COURT:

04:22PM 5 Q. Regarding the ranking document, you became  
04:22PM 6 aware of the ranking document prior to the commencement  
04:22PM 7 of the guilt-innocence phase; is that correct?

04:22PM 8 A. Yes, sir.

04:22PM 9 Q. What was your theory for admission of the  
04:22PM 10 ranking document at the guilt-innocence phase or  
04:22PM 11 punishment phase, for that matter?

04:22PM 12 A. We believed it to be part of the business  
04:22PM 13 records of the Texas Department of Criminal Justice. We  
04:22PM 14 believed it had been generated during the course of the  
04:22PM 15 investigation by law enforcement. We believed that it  
04:23PM 16 had been obviously separated.

04:23PM 17 We believed that the D. A.'s office had  
04:23PM 18 knowledge of or law enforcement had knowledge of this  
04:23PM 19 document and the ranking contained therein and it had  
04:23PM 20 been done as a result --

04:23PM 21 Q. What's the theory for its admission? It's  
04:23PM 22 clearly a document that's written that says what someone  
04:23PM 23 else said and actually said what someone else said,  
04:23PM 24 other people said. What was your theory of  
04:23PM 25 admissibility?

04:23PM 1 A. We thought it was a business record under the  
04:23PM 2 business record exception. If we had known that it  
04:23PM 3 was -- the specific officer who generated the report,  
04:23PM 4 would have issued a subpoena for him, asked him if he  
04:23PM 5 prepared that document, what the purpose of the document  
04:23PM 6 was and ask him whether or not Mr. Halprin was the last  
04:23PM 7 name on the ranking document of leadership.

04:23PM 8 That's how we would have gotten it in  
04:23PM 9 evidence. Not knowing -- once you don't know who did  
04:24PM 10 that document and everybody denies even seeing the  
04:24PM 11 document before, even though it's in your stack of  
04:24PM 12 discovery, you know that's not the truth.

04:24PM 13 Q. Okay. Did you prior to the trial -- when I say  
04:24PM 14 "the trial" I'm talking about anything after the voir  
04:24PM 15 dire stage. Did you have any discussion with anyone  
04:24PM 16 from the State about the source of that document?

04:24PM 17 A. Yes, sir.

04:24PM 18 Q. Do you recall who?

04:24PM 19 A. I know we did with Tom D'Amore and I know I did  
04:24PM 20 with Toby. Everybody that was involved on that, we kept  
04:24PM 21 asking them where it was and everybody said, "We don't  
04:24PM 22 know what it is," hadn't seen that before, don't have a  
04:24PM 23 clue.

04:24PM 24 Q. This occurred before the jury is in the box,  
04:24PM 25 these discussions?

04:24PM 1 A. Yes, sir. I believe so. I think that was an  
04:24PM 2 on-going during the course of the trial.

04:24PM 3 Q. Did you or Mr. Ashford ask for a continuance to  
04:25PM 4 determine that information?

04:25PM 5 A. I don't believe so. All the witnesses  
04:25PM 6 denied -- all the record custodians denied having any  
04:25PM 7 knowledge and that it wasn't their document. Now, it  
04:25PM 8 ended up later being, I understand, being found in the  
04:25PM 9 Office of the Inspector General in their file.

04:25PM 10 Q. The answer is you did not?

04:25PM 11 A. We did not move for a continuance at that time,  
04:25PM 12 no.

04:25PM 13 Q. When you offered it during the trial once the  
04:25PM 14 jury is in the box did you have a good faith belief that  
04:25PM 15 it would become admissible -- that it would be  
04:25PM 16 admissible as a business records -- as a business  
04:25PM 17 record?

04:25PM 18 A. Yes, sir.

04:25PM 19 Q. And when the Judge shot you down did you ask  
04:26PM 20 for a continuance?

04:26PM 21 A. No, sir.

04:26PM 22 Q. Why not? Do you know?

04:26PM 23 A. Well, I'm trying to recall if we had asked for  
04:26PM 24 a continuance previously from Judge Cunningham and that  
04:26PM 25 he either -- I can't remember if it was on the record or



04:26PM 1 off the record about something else.

04:26PM 2 Q. Was he known for being particularly patient on  
04:26PM 3 trying these cases?

04:26PM 4 A. Oh, you know how judges are, Your Honor. They  
04:26PM 5 try to be patient.

04:26PM 6 Q. We do.

04:26PM 7 A. Trials try patience. We did not -- I don't  
04:26PM 8 believe we asked -- moved for a continuance based on  
04:26PM 9 that.

04:26PM 10 Q. Would it be a fair assessment that when you  
04:26PM 11 were unable to get the ranking document in you were  
04:27PM 12 blind-sided or felt blind-sided?

04:27PM 13 A. My opinion is that it is Brady.

04:27PM 14 Q. The question is did you feel like you got  
04:27PM 15 ambushed?

04:27PM 16 A. Feel like they withheld -- that evidence,  
04:27PM 17 helpful evidence to Mr. Halprin was being withheld. As  
04:27PM 18 far as being ambushed --

04:27PM 19 Q. You discussed the document -- according to your  
04:27PM 20 recollection, you discussed the document prior to  
04:27PM 21 swearing in the jury.

04:27PM 22 A. Right.

04:27PM 23 Q. The State knew you were going to try and get  
04:27PM 24 the document in evidence.

04:27PM 25 A. Right. I don't think there's any doubt about

04:27PM 1 that.

04:27PM 2 Q. You indicated to the State that you thought it  
04:27PM 3 was important mitigating evidence.

04:27PM 4 A. Yes, sir.

04:27PM 5 Q. At trial you can't get it in and no one knows  
04:28PM 6 who sponsored it.

04:28PM 7 A. That was what we were led to believe.

04:28PM 8 Q. And you didn't ask for a continuance.

04:28PM 9 A. We did not ask for a continuance as I recall.

04:28PM 10 Q. And really the same scenario is true on the --  
04:28PM 11 some of the underlying facts that you would have liked  
04:28PM 12 to have gotten in through Dr. Goodness; is that correct?  
04:28PM 13 Did you anticipate that you were going to get shot down  
04:28PM 14 in the way in which you did in trying to admit that  
04:28PM 15 evidence?

04:28PM 16 A. No.

04:28PM 17 Q. You kind of saw that coming?

04:28PM 18 A. No, no. I don't think George saw that coming,  
04:28PM 19 no. I didn't believe that was going to happen or didn't  
04:28PM 20 anticipate that to happen in the trial. When it did  
04:28PM 21 happen, once again I'm trying to recall what happened at  
04:29PM 22 that point.

04:29PM 23 Q. That was really George's issue?

04:29PM 24 A. George was handling the mitigation.

04:29PM 25 THE COURT: Either side have any other

04:29PM 1 questions?

04:29PM 2 MR. ANTON: No, Your Honor.

04:29PM 3 MS. SMITH: No, Your Honor.

04:29PM 4 THE COURT: You may step down.

04:29PM 5 (The witness left the stand.)

04:29PM 6 THE COURT: Do you have any more witnesses  
04:29PM 7 today?

04:29PM 8 MR. ANTON: No, we don't.

04:29PM 9 MR. UDASHEN: While we're on the record,  
04:29PM 10 the only thing that we may need -- we don't need to  
04:29PM 11 discuss it today. This motion I filed for an additional  
04:29PM 12 evidentiary hearing, I guess, is going to be the next  
04:29PM 13 thing we're going to ask the Court to make a decision  
04:29PM 14 on. And if you want to have us come back next week or  
04:29PM 15 come back another time so you have time to review my  
04:29PM 16 motion, that's fine.

04:30PM 17 THE COURT: Who is it that you want?

04:30PM 18 MR. UDASHEN: It was for Toby Shook, Tom  
04:30PM 19 D'Amore, Bill Wirskey and Sgt. Whitman.

04:30PM 20 THE COURT: When can we meet next week? I  
04:30PM 21 think it would be appropriate to discuss your motion on  
04:30PM 22 the record in court sometime next week if both parties  
04:30PM 23 can be ready.

04:30PM 24 MS. SMITH: Are we talking about this  
04:30PM 25 motion for additional evidentiary hearing?

04:30PM 1 THE COURT: Yes.

04:30PM 2 MR. ANTON: I have a hearing in Denton  
04:30PM 3 Tuesday morning. Other than that, I'm free all week.

04:31PM 4 MR. UDASHEN: Can we do it Thursday?

04:31PM 5 THE COURT: I think we're better off doing  
04:31PM 6 it Friday.

04:31PM 7 Does that work for the State.

04:31PM 8 MR. UDASHEN: I'm going to be with Judge  
04:31PM 9 McBride in Fort Worth. If you want to call him and tell  
04:31PM 10 him I can't make it.

04:31PM 11 THE COURT: He's known for his  
04:31PM 12 congeniality, never appeared before him.

04:31PM 13 MR. UDASHEN: I was supposed to be there  
04:31PM 14 today.

04:31PM 15 THE COURT: Let's make it 1:00 Thursday.  
04:31PM 16 Will one of you guys do me a favor and make a note to  
04:31PM 17 tell me to put it on the calendar, one, Thursday?

04:31PM 18

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20 (End of Proceedings)

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1 STATE OF TEXAS )


2 COUNTY OF DALLAS )

3 I, Bridget Barnhill, Official Court Reporter in and  
4 for the 283rd Judicial District Court of Dallas County,  
5 Texas do hereby certify that the above and foregoing  
6 contains a true and correct transcription of all  
7 portions of evidence and other proceedings requested in  
8 writing by counsel for the parties to be included in the  
9 reporter's record in the above-styled and numbered  
10 cause, all of which occurred in open court or in  
11 chambers and were reported by me.

12 I further certify that this transcription of the  
13 proceedings truly and correctly reflects the exhibits,  
14 if any, admitted by the respective parties.

15 I further certify that the total cost for the  
16 preparation of this Reporter's Record is included on  
17 original certificate in final volume and will be paid by  
18 Dallas County.

19 WITNESS MY HAND this the 3rd day of September,  
20 2010.



Bridget Barnhill, CSR No. 3199  
Official Court Reporter  
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